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# State Participation in the Superfund Remedial Program

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Feb 84

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Emergency and Remedial Response

EPA

# STATE PARTICIPATION IN THE SUPERFUND REMEDIAL PROGRAM

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The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (PL 95-910) establishes requirements for State participation in remedial activities undertaken by the Federal government. Specifically, the Act requires States to enter into a "contract or cooperative agreement" with the President (EPA, as the responsible agency) prior to undertaking any remedial action. These required agreements provide a mechanism for State participation in the remedial action and are used to obtain the assurances required in the Act. Policies and procedures governing the development, execution and administration of these agreements are explained in this document.

The manual itself has been designed to function as a handbook for the use of staff who deal with remedial response agreements. It summarizes, in one central reference, agency regulations, directives, and procedures which apply to such agreements.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

# STATE PARTICIPATION IN THE SUPERFUND REMEDIAL PROGRAM

This document provides information on how to implement approved remedial response activities at National Priorities List sites in accordance with the National Oil and Hazardous Substances Contingency Plan. Its scope includes cooperative agreements, Superfund State Contracts and credit claims.

Further, this document incorporates several new Superfund initiatives EPA has taken in the past year to facilitate remedial response and to make it easier for States to join EPA in addressing problems at uncontrolled hazardous waste sites. One is to allow EPA to share in operation and maintenance (O&M) costs for up to one year, rather than the six months limit heretofore in effect. A second is an option of management assistance cooperative agreements to fund State costs at EPA-lead sites. A third is the option of multi-site cooperative agreements, a concept which has always been permissible but has not been previously developed. The document is intended to serve as a manual for State and EPA staff who are implementing the Superfund remedial program, consistent with the delegations of authority we plan to issue in the coming months. Until these delegations are approved, cooperative agreements, Superfund State Contracts and audit responses will be processed in Headquarters in accordance with current practice.

The document is the result of many months of hard work and reflects the input of a number of key people, including representatives of EPA's Regional Offices, State agency personnel working through the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), representatives of citizens organizations, and other offices in EPA headquarters, especially the Office of General Counsel.

Some of the procedures described in the document are presented as suggested models for Regions and States. We expect Regions and States to tailor their internal procedures in their own situations as appropriate.

It should be noted that we will be updating the document as needed and major updates will be distributed in draft for comment before final issuance. Therefore, it is important that the actual user of each copy of the document return the Update Mailing List form in the front of the volume.

A limited number of additional copies are available at no cost to Federal and State governmental officials and may be obtained by contacting: Chief, State and Regional Coordination Branch (WH-548E), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-2443. The document may also be purchased by persons outside of government through the Government Printing Office (GPO) or the National Technical Information Service (NTIS).

Lee M. Thomas

Lee M. Thomas
Assistant Administrator

(FOLD HERE)

This handbook will be updated periodically as new procedures are developed. and new replacement pages will be added to the document. Receipt of the replacement pages is necessary to ensure that all concerned staff are operating in a current and consistent manner. To ensure inclusion on the update mailing list, please fill out the form below, fold on the dotted lines as indicated, and return to the address provided on the reverse side.

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Hazardous Site Control Division (WH-548E)
U.S. Environmental Protection Agency
Washington, D.C. 20460

FOLD #1

# FOREWORD

The Director, Office of Emergency and Remedial Response, issued the Guidance on Cooperative Agreements and Contracts with States under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510) in March 1982. Drafts of this document had been distributed during the previous year for comment and provisional use.

During the remainder of 1982, regulations and policies evolved which had a substantial impact on the remedial response program. Examples include publication of the National Priorities List (NPL), promulgation of the National Oil and Hazardous Substances Contingency Plan (NCP) and a new regulation for Procurement under Assistance Agreements (40 CFR 33), and development of a policy on "Payment of State Enforcement Costs under Superfund." Consequently, we decided to prepare and issue a revised document.

On January 31, 1983, a revised draft was distributed for comment to all EPA Regions, participating Headquarters offices, and three major State associations. The Regions were asked to distribute the draft to their States. Comments were requested by February 25; comments received after that date were also reviewed and considered.

Five Regions, four States, one State association, and ten Headquarters offices responded. Major comments are summarized below.

## General Comments

A number of commenters found the draft revised document very helpful. However, some comments reflected perceived shortcomings in the document. These comments can be divided into four categories:

1. Many commenters found that the draft did not sufficiently emphasize the program's flexibility. This was primarily due to verb choice. Preferences and requirements have been more clearly differentiated in the final document.

2. Some commenters felt that the State role in decision-making on remedial response was too limited. It was our intent to indicate that the State is a full partner, involved in all stages of the program. We believe this has been stated more explicitly in the final document.

3. Some commenters felt that exhibits would be helpful. For this reason, a number of exhibits have been included in the final document.

4. Many commenters recommended revisions to increase the general clarity of the document, many of which have been incorporated throughout. Some of these are specifically listed below.

## More Specific Comments

Many commenters objected to requiring States to provide quality assurance (QA), site safety, and community relations plans (CRP) with their applications for assistance. There were two major grounds of objection: 1) these requirements would delay projects, and 2) States would incur substantial costs before a Cooperative Agreement providing EPA assistance was in place. The final document emphasizes that a State need not provide QA and site safety plans with its application; development of these plans should instead be included as tasks in the proposed statement of work. EPA may, at no cost to the State, prepare the CRP to be included in the application package. The State is subsequently responsible for updating the CRP as part of the project covered by the Cooperative Agreement.

A number of commenters felt that Remedial Action Master Plans (RAMPs) have not in the past served as adequate planning documents. RAMPs are no longer being initiated by EPA. EPA will fund preliminary planning activities on a site-specific basis, but will no longer require a particular format for outputs of such activities.

Several commenters raised questions about the section of the draft outlining factors for State consideration in making the lead management decision. In addition to raising questions about appropriate factors, some commenters found the draft to imply that EPA was establishing rigid criteria for State-lead projects. This implication was unintended. To correct it, we have eliminated this section from the final document.

Several commenters raised questions about the description of the clearinghouse review process. This process has now been replaced by 40 CFR Part 29, "Intergovernmental Review of the Environmental Protection Agency Programs and Activities." The requirements of this regulation are summarized in the final document.

Some commenters felt that States should not be expected to begin procurement activities before award of a Cooperative Agreement. The major reason for this is that any costs incurred would not be reimbursed, and prospective contractors might be reluctant to prepare a proposal or bid before funding was assured. The document merely suggested that States use this approach for expediting procurement; it is not a requirement. Some States have already used such procedures with good results. Where the proposed remedial activities have been authorized through an Action Memorandum or inclusion in a Remedial Accomplishments Plan, EPA has indicated its intent to award a Cooperative Agreement. This should serve to alleviate some contractor concern. As an additional guide to State programs, EPA has, since the draft was released, issued a guidance memorandum concerning methods for expediting procurement. The appropriate section of the final document has been revised to reflect the contents of that memorandum.

A number of commenters found the discussion of the National Environmental Policy Act (NEPA) functional equivalency requirements to be inadequate. This discussion has been revised in the final document.

Several commenters felt that the description of requirements for selection of an off-site facility was inadequate. We have revised this discussion in the final document to emphasize that an acceptable facility need not be in the same State as the site in question, and that facility designation may occur during the procurement process. Specific criteria for selection of an acceptable off-site facility have also been included.

Some commenters found the discussion of the verification of CERCLA credit period claims to be inadequate. A formal delineation of the procedures was in preparation at the time the draft was distributed. These procedures are detailed in Appendix C of this document.

Several questions were raised about the required level of detail in Cooperative Agreement application budget breakdowns and the need for making letter of credit drawdowns under a Cooperative Agreement by remedial activity. One commenter expressed the impression that EPA was requiring a separate Financial Status Report (FSR) each quarter for each activity. The budget breakdown requirements reflected in this document are those generally required for obtaining any cooperative agreement and were not originated by the Office of Emergency and Remedial Response (OERR). In any case, accounting by activity is not unduly complex. A single FSR may cover all activities funded under a Cooperative Agreement and it need not be provided each quarter. Some clarifications have been made in the budget section and the accounting code system has been simplified. An appendix explaining the accounting requirements has also been added to the document.

Several commenters felt that the discussion of changes in the Cooperative Agreement or Superfund State Contract (SSC) which require a formal amendment was unclear. The latitude for making adjustments to the work plan and other minor changes not requiring a formal amendment is highlighted in the final document.

Several commenters felt that the requirements for SSC payment terms were too rigid. The draft did not sufficiently reflect the actual flexibility EPA demonstrates in payment term negotiation. This section has been revised in the final document to emphasize this flexibility.

Several commenters felt that the site access and permit terms in the SSC, as stated in the document, were too rigid. This section has been revised accordingly in the final document.

Some commenters felt that the role of the U.S. Army Corps of Engineers (COE) was not made sufficiently clear and that the State's requirement to share in COE costs should be stated more explicitly. This section has been revised in the final document and the cost-sharing requirement explained more fully.

One commenter requested that EPA state its policy on calculating the State's cost-sharing requirements for remedial projects at publicly-owned sites. Since the draft was issued, the Office of Solid Waste and Emergency Response (OSWER) has issued a policy memorandum on this subject. This policy has been cited in the final document and the memorandum is included in Appendix P.

One commenter felt that the document should contain a list of abbreviations and acronyms. This has been included in the final document.

## New Initiatives

Since the January 1983 draft was issued, EPA has been re-examining Superfund policies and procedures to determine ways to expedite remedial response. As a result of this review, EPA has decided to implement several new initiatives which are incorporated into this document. These include: delegating to the Regions authority for negotiating and signing Cooperative Agreements and SSCs; providing the option of using site planning Cooperative Agreements; and providing for greater EPA participation in operation and maintenance costs, where appropriate. In addition, EPA's legal interpretation is that cost-sharing at privately-owned sites is necessary only for remedial implementation.

We have also emphasized in the document methods by which States may reduce their administrative burdens. One of these is to provide one letter certifying a State agency's authority to enter into CERCLA remedial response agreements rather than submitting a separate letter for each agreement. Another is the option of including remedial investigation/feasibility study subactivities at more than one site in the same remedial response agreement.

Some revisions to the draft have also been made to ensure consistency with 40 CFR Part 29, "Intergovernmental Review of Environmental Protection Agency Programs and Activities," and revisions to 40 CFR Part 30, "General Regulation for Assistance Programs."

## Second Draft

Because of the extensive revisions necessary to incorporate the new initiatives, on July 5, 1983, we distributed a second draft for comment to all EPA Regions, four State and citizens' associations, and involved Headquarters offices. Comments were requested by July 22; comments received after that date were also reviewed and considered.

Four Regions, two States, one citizens' group, and five Headquarters offices provided comments. Commenters generally felt that the second draft was a substantial improvement over the first, and favored the new policies reflected in it. Most comments pointed to very few problems in the draft.

However, a number of comments indicated the need to further clarify some of the initiatives. We have, therefore, provided more detailed explanations. The section concerning site planning Cooperative Agreements (now called management assistance Cooperative Agreements) was the section that commenters most frequently indicated as needing clarification. We have revised this section, but recognize that additional guidance may prove helpful. After the concept has been put into practice, we will provide additional information on management assistance Cooperative Agreements as an update to this document.

Some commenters felt that the Introduction needed to be made more helpful to readers unfamiliar with the Superfund program. We have revised the Introduction accordingly.

Several commenters questioned the requirement that State cost-sharing be provided during remedial planning for publicly-owned sites. The final document has been revised to reflect the language of CERCLA, requiring the State's cost-sharing obligation to be provided when a CERCLA-funded remedial action is to be implemented at the site. SSCs will not be required for remedial planning activities, a need that concerned some commenters.

One commenter objected to the requirement of performing an environmental assessment during remedial planning. This requirement is a fundamental EPA policy based upon statutory and regulatory mandates. Therefore, the final document continues to reflect this requirement.

One commenter, concerned about the State's role in determining the appropriate alternative for a site, questioned the requirement that the Assistant Administrator for Solid Waste and Emergency Response select the remedy. We have revised this section of the document to emphasize the State's involvement in choosing an appropriate remedy.

One commenter expressed the concern that EPA might not take full account of operation and maintenance (O&M) costs in selecting a cost-effective remedy. The final document makes clear that cost-effectiveness determinations are based on total life cycle costs, not on the costs of the remedial action alone.

One commenter requested that more specific references be made to the applicability of the Resource Conservation and Recovery Act (RCRA) standards to facility selection under CERCLA. Although Agency review of this subject continues, we have included some additional language in this area.

One commenter suggested that a reference to public availability of State and EPA remedial site files should be added to Section D of Chapter VII. Such a reference has been added in the final document.

One commenter expressed the opinion that we should specify that a quality assurance (QA) plan is needed for each site, not simply for each Cooperative Agreement, and that the QA project plan must be approved before sampling may be initiated. The final document includes these concepts both in the body of the document and in the sample provisions in Appendix F.

One commenter suggested that we identify the types of documents concerning remedial projects which Regions should forward for inclusion in Headquarters files. The final document contains more details in this area.

One commenter felt that the document should provide more information on estimating remedial action costs. This is done in the final document.

Many comments received were essentially editorial in nature, including the need for consistency throughout the document, the need to clarify some points, and the correction of typographical errors. Many changes have been made in the final document as a result of these comments.

## Additional Revisions

In addition to changes made in response to comments, a number of revisions have been made in the document to reflect policy and procedural refinements made by EPA since the second draft was issued for comment. Many of the policy and procedural changes were in development at the time of issuance of the last draft. The final document is, therefore, more accurate and more complete than the previous drafts.

One major change has been in EPA's policy concerning the period of time that the Agency will share in the costs of O&M. During most of the history of the Superfund remedial program, it was EPA's policy to provide O&M cost-sharing for up to six months after completion of a remedial action to ensure that the remedial action was functional and operational and to allow the State to put a mechanism in place to assume full responsibility for all aspects of O&M. As part of the Agency's recent effort to expedite remedial response, EPA evaluated the six-month O&M cost-sharing period and considered extending it to two years. This proposed two-year period was reflected in the July 5, 1983 draft of this document.

Superfund has since instituted procedures to plan remedial response activities, as projected by Regional personnel, throughout the life of the program. EPA is therefore better able to predict future demands on the Fund and to weigh the requirements for expenditures for all phases of remedial response, including remedial planning, remedial actions, and O&M activities. In this light, the Agency has re-examined the O&M cost-sharing issue and has decided, from the best Fund-balancing information available, that it is prudent at this time to extend the cost-sharing period from six months to one year through the end of the currently-authorized program.

## Subsequent Changes

The Office of Solid Waste and Emergency Response intends from time to time to issue changes to this document in the form of revised pages. These will include the "Reserved" parts of the document as presently published. The contact for suggesting changes and receiving copies of revisions is: Chief, State and Regional Coordination Branch, Hazardous Site Control Division (WH-548E), U.S. Environmental Protection Agency, Washington, D.C. 20460; telephone (202) 382-2443. To be certain of receiving all updates, readers are requested to return the form for this purpose which has been included in the front of this document.

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# LIST OF ACRONYMS AND ABBREVIATIONS

A number of acronyms and abbreviations are used throughout the text; each is identified in the text and, where possible, in the introduction to each appendix in which the abbreviation or acronym occurs. To assist the reader in understanding any acronym or abbreviation that may not be explained, and to provide a quick reference, a list of acronyms and abbreviations is included here. Most of the abbreviations shown are from the remedial program. However, because of the close interaction and coordination required with other aspects of Superfund, some terms used primarily by the removal program have also been included.

| | |
|---|---|
| AA | Assistant Administrator |
| ACE | U.S. Army Corps of Engineers (more appropriately referred to as COE) |
| AM | Action Memorandum |
| C/A | Cooperative Agreement |
| CERCLA | Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (PL 96-510) |
| CFR | Code of Federal Regulations |
| CLP | Contract Laboratory Program |
| COE | U.S. Army Corps of Engineers |
| CRA | Community Relations Assessment |
| CRP | Community Relations Plan |
| CWA | Clean Water Act |
| EPA | Environmental Protection Agency |
| ERD | Emergency Response Division, OERR (Superfund removals) |
| ERT | Emergency Response Team (Superfund removals) |
| FCC | Fiscal Control Center, OERR |
| FMD | Financial Management Division (EPA) |
| FMS | Financial Management System |

| | |
|---|---|
| FR | *Federal Register* |
| FS | Feasibility Study |
| FSR | Financial Status Report |
| FY | Fiscal Year |
| GAD | Grants Administration Division, OERR |
| GOB | Grants Operations Branch |
| HQ | EPA Headquarters |
| HRS | Hazard Ranking System |
| HSCD | Hazardous Site Control Division, OERR |
| IAG | Interagency Agreement |
| IFB | Invitation for Bids |
| IG | EPA Inspector General |
| IRM | Initial Remedial Measure |
| LOC | Letter of Credit |
| MBE | Minority Business Enterprise |
| MOU | Memorandum of Understanding |
| NCP | National Oil and Hazardous Substances Contingency Plan (40 CFR 300) |
| NEPA | National Environmental Policy Act of 1969 (PL 91-190) |
| NPL | National Priorities List |
| NRC | National Response Center |
| OECM | Office of Enforcement and Compliance Monitoring (EPA) |
| OERR | Office of Emergency and Remedial Response |
| OGC | Office of General Counsel (EPA) |
| OIG | Office of the Inspector General |
| O&M | Operation and Maintenance |

| | |
|---|---|
| OMB | Office of Management and Budget |
| ORC | Office of Regional Counsel (EPA) |
| OSC | On-Scene Coordinator (Superfund removals) |
| OSHA | Occupational Safety and Health Administration |
| OSW | Office of Solid Waste |
| OSWER | Office of Solid Waste and Emergency Response |
| OWPE | Office of Waste Programs Enforcement |
| PCMD | Procurement and Contracts Management Division |
| PCS | Program Control System |
| PMM | Program Management Module (part of the Project Tracking System) |
| PR | Procurement Request |
| PTS | Project Tracking System |
| QA | Quality Assurance |
| QA/QC | Quality Assurance/Quality Control |
| RA | Remedial Action *or* Regional Administrator |
| RAB | Remedial Action Branch, OERR |
| RAMP | Remedial Action Master Plan |
| RAP | Remedial Accomplishments Plan |
| RCRA | Resource Conservation and Recovery Act of 1976 (PL 94-580) |
| RD | Remedial Design |
| REAP | Regional Enforcement Accomplishments Plan |
| REM/FIT | Remedial Planning/Field Investigation Team |
| RFP | Request for Proposals |
| RI | Remedial Investigation |

| | |
|---|---|
| RI/FS | Remedial Investigation/Feasibility Study |
| ROD | Record of Decision |
| RRT | Regional Response Team (Superfund removals) |
| RS | Responsiveness Summary |
| RSCRC | Regional Superfund Community Relations Coordinator |
| RSPO | Regional Site Project Officer |
| SBE | Small Business Enterprise |
| SCRC | State Community Relations Coordinator |
| SF | Standard Form |
| SOW | Statement of Work |
| SPMS | Strategic Planning and Management System |
| SPO | State Project Officer |
| SRCB | State and Regional Coordination Branch, OERR |
| SSC | Superfund State Contract |
| USGS | U.S. Geological Survey |
| WBE | Women's Business Enterprise |
| ZM | Zone Manager |

# I. INTRODUCTION

In March 1982, the Office of Emergency and Remedial Response (OERR) in the U.S. Environmental Protection Agency (EPA) published Guidance for Cooperative Agreements and Contracts with States Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (PL 96-510). The document was intended to provide instructions to EPA Regional offices on the development and use of Cooperative Agreements and Superfund State Contracts (SSCs) for remedial actions taken under CERCLA.

This manual, State Participation in the Superfund Remedial Program, supersedes the March 1982 document. It has been developed to assist both EPA staff and State officials in implementing EPA policies and procedures related to State participation in the Superfund remedial program. Procedures outlined herein pertain to all agreements covering approved remedial projects.

Remedial responses* may be managed by either the State or EPA. If the State manages the response, a Cooperative Agreement must be entered into for all phases of the remedial work. If, conversely, EPA manages the response, EPA and the State must enter into an SSC prior to initiating a remedial action. To cover EPA-lead remedial planning, at the discretion of the EPA Regional Administrator, the State and EPA may either enter into a formal Memorandum of Understanding (MOU), or the State may submit a letter to the Regional Administrator, requesting EPA to undertake such activities. All O&M activities for which EPA provides a share of costs must be implemented through a Cooperative Agreement since State responsibility for O&M is a statutory requirement.

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* Remedial response is a series of activities taken at a hazardous waste site to effect a permanent remedy; it usually involves the following two activities: remedial planning (defined in CERCLA section 101[23]) and remedial implementation. Remedial planning includes the subactivities of remedial investigation/feasibility study and remedial design. Remedial implementation includes the subactivities of remedial action, initial remedial measures, and operation and maintenance. Remedial action is defined as that phase of remedial response during which a selected remedy is actually implemented; it includes both source control and off-site actions. (See Appendix Q for more detailed definitions.)

The type and components of the agreement negotiated will vary, depending upon the demands of the site work and the requirements of Regional and State officials. Exhibit I-1, on the following page, graphically depicts the flow of administrative and remedial events that typically occurs after a site is determined to be appropriate for remedial response. The exhibit also shows the types of remedial response agreements used for both remedial planning and remedial implementation projects at EPA- and State-lead sites.

The authority for entering into Cooperative Agreements and SSCs is provided in CERCLA sections 104(d)(1) and 104(c)(3). The power to approve general remedial agreements is given by section 104(d)(1), which states in part:

> "Where the President determines that a State or political subdivision thereof has the capability to carry out any or all of the actions authorized in this section, the President may, in his discretion, enter into a contract or cooperative agreement with such State or political subdivision..."

Authority for entering into agreements for remedial actions is given by section 104(c)(3), as follows:

> "The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President..."

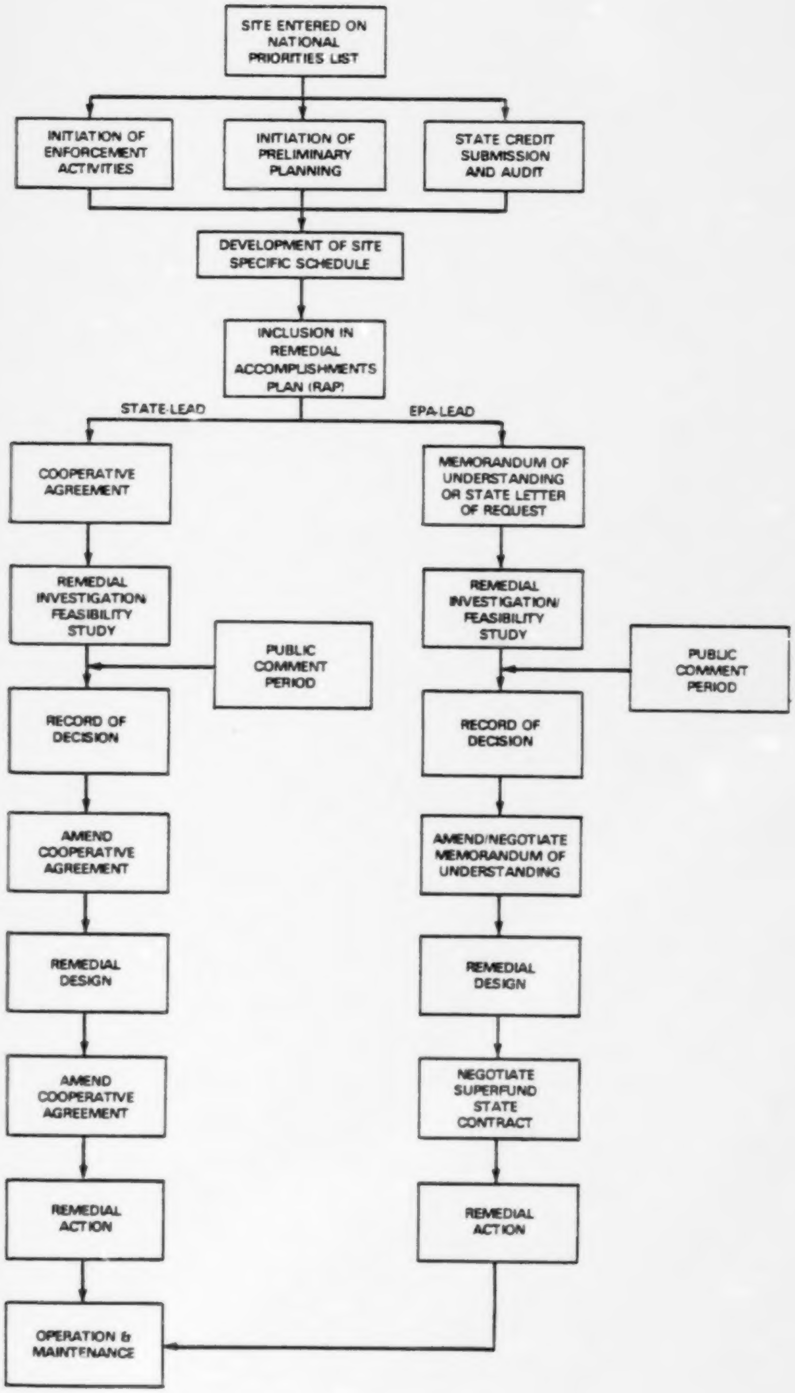
By Executive Order No. 12316, dated August 14, 1981, the President delegated this authority to several Federal departments and agencies, including EPA.

## A. PURPOSE OF THE MANUAL

Because the users' levels of experience and familiarity with the program will vary, a balance has been sought in both the scope and level of detail for this document. Of necessity, this document must accomplish several objectives simultaneously. To do so requires that the document:

- Present information that amplifies and clarifies existing program policy on EPA- and State-lead remedial response

# EXHIBIT I-1
# SITE CHRONOLOGY


SITE ENTERED ON NATIONAL PRIORITIES LIST
INITIATION OF ENFORCEMENT ACTIVITIES
INITIATION OF PRELIMINARY PLANNING
STATE CREDIT SUBMISSION AND AUDIT
DEVELOPMENT OF SITE SPECIFIC SCHEDULE
INCLUSION IN REMEDIAL ACCOMPLISHMENTS PLAN (RAP)
STATE-LEAD
EPA-LEAD
COOPERATIVE AGREEMENT
MEMORANDUM OF UNDERSTANDING OR STATE LETTER OF REQUEST
REMEDIAL INVESTIGATION/ FEASIBILITY STUDY
REMEDIAL INVESTIGATION/ FEASIBILITY STUDY
PUBLIC COMMENT PERIOD
PUBLIC COMMENT PERIOD
RECORD OF DECISION
RECORD OF DECISION
AMEND COOPERATIVE AGREEMENT
AMEND/NEGOTIATE MEMORANDUM OF UNDERSTANDING
REMEDIAL DESIGN
REMEDIAL DESIGN
AMEND COOPERATIVE AGREEMENT
NEGOTIATE SUPERFUND STATE CONTRACT
REMEDIAL ACTION
REMEDIAL ACTION
OPERATION & MAINTENANCE

- Describe documents to be prepared and administrative events that occur at sites either before a remedial response can be initiated or concurrently with a remedial response

- Identify key roles and responsibilities of program staff who plan, administer, and manage remedial response

- Specify procedural steps to be followed at all levels (i.e., States, Regions, Headquarters) to ensure that policy is carried out expeditiously and well.

This document is designed to be used as a manual for implementation of existing policy, rather than as a policy-making document.

This document has been developed primarily for the use of:

- EPA Regional Site Project Officers (RSPOs), who oversee and participate in the planning and administration of remedial response activities

- State Officials, especially State Project Officers (SPOs), who are responsible for work performed at priority remedial sites

- EPA Headquarters Zone Managers, who coordinate Headquarters participation in and monitoring of remedial response activities.

Detailed discussion of the roles and responsibilities of each group is contained in each chapter.

## B. BACKGROUND -- KEY TERMS

Several terms used in the Superfund remedial program are central to understanding the information presented in this document. These terms -- remedial response, Cooperative Agreements, MOUs, SSCs, State assurances, and State credits -- appear throughout this document and are described here. Definitions can also be found in references cited throughout the text and appendices of this document. Readers who are familiar with the CERCLA legislation and the Superfund program may wish to proceed directly to Section C of this chapter.

### B.1 Remedial Response

CERCLA defines two types of responses that may be taken in the event of a release or threatened release of a hazardous substance into the environment: removals and remedial response. The scope of this document is limited to remedial response activities and events preparatory to undertaking them.

A remedial response is a series of activities and subactivities, consistent with a permanent remedy, that prevents or mitigates the migration or release of a hazardous substance into the environment. Each remedial response may involve the following two activities: remedial planning (comprised of the subactivities of remedial investigation/feasibility study and remedial design) and remedial implementation (comprised of remedial actions, initial remedial measures [IRMs], and operation and maintenance). Section 300.68 of the NCP identifies three types of remedial actions that can be taken at a site: IRMs, source control remedial actions, and off-site remedial actions (see Appendix Q for definitions). Some type of remedial planning -- at least a feasibility study and a remedial design -- must be completed before a source control or off-site remedial action can be selected and implemented.*

### B.2 Remedial Response Agreements

Sections 104(c)(3) and 104(d)(1) of CERCLA authorize the use of either a Cooperative Agreement or a Contract as the instrument for delineating EPA and State responsibilities for remedial actions at a site, for obtaining required State assurances, and for committing the necessary funds. For remedial planning, EPA requires the use of a Cooperative Agreement for State-lead projects, and a State letter of request or an MOU for EPA-lead projects. The appropriate choice of instrument depends upon whether the State or EPA assumes lead responsibility, the types of activities or subactivities undertaken, and the needs of EPA and State officials.

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* In order to expedite approval and implementation of simple IRMs, remedial investigation/feasibility study and remedial design for the IRM may be limited in scope.

When a State assumes management responsibility for any remedial activities at a site, a Cooperative Agreement is used, as prescribed by CERCLA. Under the Federal Grant and Cooperative Agreement Act of 1977, when a Federal agency provides assistance (for example, transferring money or services) to a State or political subdivision and substantial Federal involvement is anticipated, a Cooperative Agreement is the appropriate instrument for providing that assistance. A Cooperative Agreement for remedial implementation under CERCLA also documents EPA and State responsibilities and serves as an instrument for obtaining any required CERCLA section 104(c)(3) assurances.

If, conversely, EPA has the lead for any remedial activities at a site, the appropriate instrument can be a State letter of request, an MOU, or an SSC. When initiating remedial planning, the instrument used may be either a letter from the State requesting that the activities be undertaken or an MOU. An SSC is appropriate for remedial action.

The complexity of and requirements for EPA-lead agreements vary considerably. The letter of request is a written statement verifying that State officials are aware of the requirements of the proposed remedial activities, in a generic sense, and requesting that EPA undertake the project. An MOU is a joint agreement between EPA and a State defining the scope of work for the project and the responsibilities of the respective parties. An SSC serves the same functions as an MOU and also acts as the vehicle for obtaining necessary State assurances under section 104(c)(3) of CERCLA. It is a bilateral contract that is legally binding on both EPA and the concerned State. While a Cooperative Agreement obligates money for a project, EPA-lead funds must be obligated through a procurement contract (REM/FIT) or an Interagency Agreement.

### B.3 State Assurances

Before the Federal government funds remedial implementation, section 104(c)(3) of CERCLA requires a State to provide assurances relating to cost-sharing, off-site treatment, storage, or disposal, and operation and maintenance. These assurances are provided in a Cooperative Agreement or an SSC. However, they need not be provided during remedial planning.

### B.3.a Cost-Sharing

In accordance with CERCLA section 104(c)(3)(C), a State is required to share in the costs of the remedial actions performed at a site. The percentage of a State's cost share depends upon the ownership of the site at the time of disposal of the hazardous substances. At privately-owned sites, the State is required to pay 10 percent of remedial implementation costs (remedial action, IRMs, operation and maintenance). At publicly-owned sites (owned by the State or a political subdivision thereof), the State is required to pay at least 50 percent of all costs for removals, remedial planning, and remedial implementation as part of the agreement covering remedial action at that site. No cost-sharing is required during remedial planning at any site. However, the State must provide its share of costs for remedial planning at a publicly-owned site if a CERCLA-funded remedial action is undertaken there.

Under a Cooperative Agreement, the State can furnish its share of remedial costs by supplying services and/or cash equivalent to its cost share. Under an SSC, these costs must be provided in the form of cash payments. For both types of agreements, the State may also reduce the amount of State-funded services or cash to be provided by authorizing a drawdown of any available State credit (see Section II.F and Appendix C of this document). Procedures for calculating and contributing a State's cost share are discussed in Chapters III (Cooperative Agreements) and V (SSCs).

Allowable, approved cost-sharing which States have already paid for remedial planning activities at a privately-owned site under past EPA policy may be applied toward the State's share of costs for remedial implementation at that site (see "Waiver of 10 Percent Cost Share for Remedial Planning at Privately-Owned Sites," OSWER, May 13, 1983, shown in Appendix P).

### B.3.b Off-Site Treatment, Storage, or Disposal

At sites where off-site treatment, storage, or disposal of hazardous wastes is necessary to implement a selected remedial action (including an IRM), the State is required to assure the availability of a hazardous waste treatment, storage, or disposal facility that satisfies three conditions.

First, the facility must have an applicable permit or have been granted interim status in accordance with the Resource Conservation and Recovery Act (RCRA). Such permits or authorization may be issued by EPA or an authorized State. Second, it must have a RCRA Part B permit or have had a RCRA compliance inspection within 12 months prior to its use for treatment, storage, or disposal of site wastes and must have been found to comply with the RCRA regulations. Third, it must have sufficient capacity to handle wastes from the site. In addition, EPA must find off-site treatment, storage, or disposal to be cost-effective in comparison to other remedial actions that would provide adequate protection of public health, welfare, or the environment. The facility need not be located in the same State as the site in question. (See "Requirements for Selecting an Off-Site Option in a Superfund Response Action," OERR, February 28, 1983, in Appendix P.) Further discussion is provided in Section III.B for Cooperative Agreements and in Section V.C for SSCs.

### B.3.c Operation and Maintenance (O&M)

The third assurance required by CERCLA is that a State will assume responsibility for all future O&M for the expected life of each remedial action as determined by EPA and the State. In accordance with current policy, EPA may, for a period not to exceed one year after completion of remedial response activities, share in the costs of any required O&M. These costs will be shared on the same percentage basis as costs for other remedial implementation subactivities. EPA's procedures for obtaining this assurance and additional details of EPA's current policy are discussed in Section III.B for Cooperative Agreements and in Section V.C for SSCs.

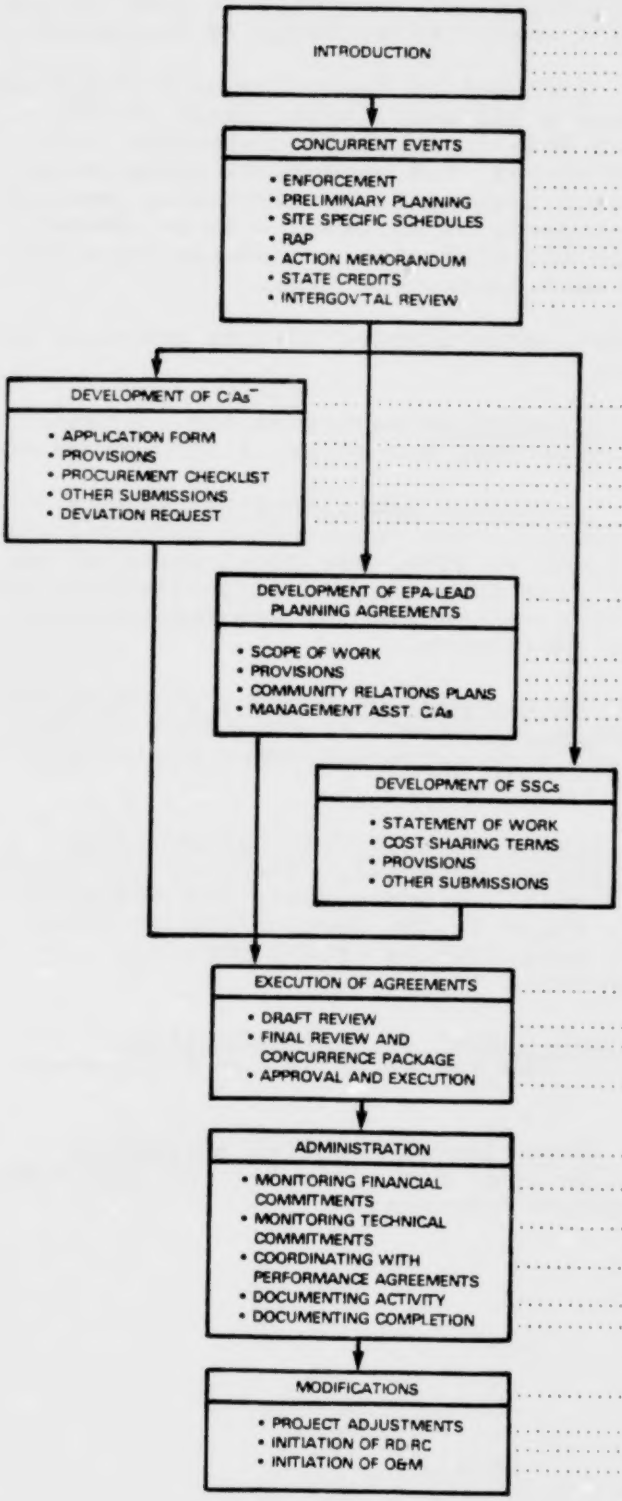
### B.4 State Credits

A final concept that is critical to understanding this document is that of State credits. Section 104(c)(3)(C) of CERCLA provides that a State may receive credit for direct, out-of-pocket, non-Federal funds expended or obligated by the State or a political subdivision thereof for cost-eligible response actions at sites between January 1, 1978, and December 11, 1980. As described above, these credits can be used to meet State cost-sharing requirements at that site. Procedures for developing and submitting an accounting of these costs can be found in Section II.F and Appendix C of this document.

## C. OVERVIEW OF THE MANUAL

This document has been organized to reflect the general sequence of events that occurs prior to and during the development and implementation of agreements for remedial response. Exhibit I-2, on the next page, presents a flow

# EXHIBIT I-2
# DOCUMENT OUTLINE



| | CHAPTER AND SECTION | PAGE |
|---|---|---|
| INTRODUCTION | I | I-1 |
| | I-A | I-2 |
| | I-B | I-3 |
| | I-C | I-7 |
| CONCURRENT EVENTS | II | II-1 |
| • ENFORCEMENT | II-A | II-2 |
| • PRELIMINARY PLANNING | II-B | II-2 |
| • SITE SPECIFIC SCHEDULES | II-C | II-3 |
| • RAP | II-D | II-3 |
| • ACTION MEMORANDUM | II-E | II-4 |
| • STATE CREDITS | II-F | II-4 |
| • INTERGOV'TAL REVIEW | II-G | II-5 |
| DEVELOPMENT OF CAs | III | III-1 |
| • APPLICATION FORM | III-A | III-2 |
| • PROVISIONS | III-B | III-6 |
| • PROCUREMENT CHECKLIST | III-C | III-12 |
| • OTHER SUBMISSIONS | III-D | III-13 |
| • DEVIATION REQUEST | III-E | III-15 |
| DEVELOPMENT OF EPA-LEAD PLANNING AGREEMENTS | IV | IV-1 |
| • SCOPE OF WORK | IV-A | IV-3 |
| • PROVISIONS | IV-B | IV-3 |
| • COMMUNITY RELATIONS PLANS | IV-C | IV-5 |
| • MANAGEMENT ASST. CAs | IV-D | IV-6 |
| DEVELOPMENT OF SSCs | V | V-1 |
| • STATEMENT OF WORK | V-A | V-2 |
| • COST SHARING TERMS | V-B | V-2 |
| • PROVISIONS | V-C | V-4 |
| • OTHER SUBMISSIONS | V-D | V-7 |
| EXECUTION OF AGREEMENTS | VI | VI-1 |
| • DRAFT REVIEW | VI-A | VI-1 |
| • FINAL REVIEW AND CONCURRENCE PACKAGE | VI-B | VI-2 |
| • APPROVAL AND EXECUTION | VI-C | VI-4 |
| ADMINISTRATION | VII | VII-1 |
| • MONITORING FINANCIAL COMMITMENTS | VII-A | VII-1 |
| • MONITORING TECHNICAL COMMITMENTS | VII-B | VII-3 |
| • COORDINATING WITH PERFORMANCE AGREEMENTS | VII-C | VII-5 |
| • DOCUMENTING ACTIVITY | VII-D | VII-6 |
| • DOCUMENTING COMPLETION | VII-E | VII-7 |
| MODIFICATIONS | VIII | VIII-1 |
| • PROJECT ADJUSTMENTS | VIII-A | VIII-1 |
| • INITIATION OF RD/RC | VIII-B | VIII-3 |
| • INITIATION OF O&M | VIII-C | VIII-7 |

diagram illustrating the organization of this document. Each chapter is represented by a frame of the diagram and is shown in relation to other chapters. Within each frame, key activities are identified and reference is made to the location in the document where the activity is discussed.

Whenever possible, information common to both State and EPA-lead remedial response has been consolidated in one chapter. This has been done in chapters concerning concurrent administrative events, and execution, administration, and modification of agreements. Information pertaining to the actual development of agreements is presented separately to emphasize the different procedures involved in the preparation of each instrument type.

To assist the reader, each chapter in this document is briefly outlined below:

- Chapter I - Introduction describes the context, purpose, organization, and scope of this document
- Chapter II - Concurrent Administrative Events discusses administrative events that precede, or occur simultaneously with, the development of an agreement and also identifies the significance of these activities for developing and implementing the agreement instrument
- Chapter III - Development of Cooperative Agreement Application Packages describes key steps in the development of Cooperative Agreement application packages
- Chapter IV - Development of EPA-Lead Remedial Planning Agreements generally discusses the types of agreements that are appropriate and describes in detail key steps in the development of MOUs, which are the more complex of the EPA-lead planning agreements
- Chapter V - Development of Superfund State Contracts describes key steps in the development of SSCs
- Chapter VI - Execution of Remedial Agreements identifies procedures for reviewing and approving remedial response agreements

- Chapter VII - Administration of Remedial Agreements identifies procedures for monitoring, coordinating, and documenting implementation of remedial response agreements

- Chapter VIII - Agreement Modifications discusses the purpose of, and identifies procedures for, project adjustments and new activity initiatives.

Appendices to the document contain examples, supplementary information, EPA guidance memoranda, a glossary of terms, and a list of references to documents and publications providing additional detailed information.

To assist EPA and State staff, charts summarizing individual responsibilities for each administrative activity described in this document can be found at the beginning of each chapter. When appropriate, the charts also display a list of work products and/or references to additional sources of information. These exhibits can serve as "checklists" for EPA and State officials as they implement the steps outlined in this document.

* * * * *

The remainder of this document describes the development and use of CERCLA remedial response agreements. The following chapter provides a brief description of events that are usually initiated prior to or concurrently with the development of a remedial response agreement, and describes their significance to the development and implementation of agreement instruments.

## II. CONCURRENT ADMINISTRATIVE EVENTS

While the focus of this document is on the development of remedial response agreements, this process is more fully understood in the context of a number of other events likely to occur once a site is placed on the National Priorities List (NPL). The following may be among these:

- Initiation of enforcement activities to ensure that the proper groundwork is laid for potential future enforcement and cost recovery actions
- Initiation of preliminary planning activities to assess the need for removal and remedial responses, and to define an approach for enforcement activities
- Development of a site-specific schedule to tentatively schedule removal, remedial, and enforcement activities at the site
- Inclusion of remedial response activities at the site in the Remedial Accomplishments Plan (RAP) to tentatively schedule obligation of funds
- Development of the Action Memorandum for the site to document Regional Administrator approval of the first phase of the remedial response
- Identification and review of State credit submissions to enable a State to apply its credit against its share of remedial costs
- Initiation of intergovernmental review procedures for applications for Federal assistance.

These activities have a significant bearing on the development of remedial response agreements and thus are the subject of this chapter.

Concurrently with the events listed above, EPA and the State need to consider and ultimately decide who will assume lead management responsibility for directing the remedial response activities at the site. EPA and the State should also initiate community relations activities and should involve the Regional Superfund Community

Relations Coordinator (RSCRC) in their discussions concerning the site. More detailed information on community relations activities is provided in Community Relations in Superfund: A Handbook, (interim version), OERR, September 1983.

Responsibilities of the SPO, the RSPO, and the Zone Manager for each event shown will be discussed throughout this chapter. Exhibit II-1, on the following pages, summarizes these responsibilities and provides a list of additional guidance cited in the text. The remainder of this chapter discusses each of the activities noted above.

## A. INITIATION OF ENFORCEMENT ACTIVITIES

The enforcement process begins immediately upon inclusion of a site on the NPL through attempts to identify potentially responsible parties. During these preliminary stages, it is important that the SPO, RSPO, and Zone Manager:

- Share information about responsible parties with State and EPA enforcement staff to determine the viability of an enforcement action
- Establish site files and document all steps taken in the development of a remedial response agreement to support any future cost recovery actions.

Subsequent to these initial efforts, remedial response at the site should continue to be coordinated with enforcement staff. This is crucial not only for cost recovery purposes, but also to ensure that any information discovered during the course of remedial activities, which may enhance the potential for enforcement or voluntary response, is shared with appropriate State and EPA staff.

Additional information on the importance of documentation and the establishment and maintenance of site files is provided in Section VII.D of this document. Detailed guidance on the enforcement process is available in Cost Recovery Actions Under CERCLA, Office of Enforcement Counsel (OEC) and Office of Solid Waste and Emergency Response (OSWER), August 26, 1983.

## B. INITIATION OF PRELIMINARY PLANNING

In the past, EPA prepared a Remedial Action Master Plan (RAMP) for a remedial site as soon as feasible after the site appeared on the NPL. A RAMP was a preliminary planning document that outlined existing site data and

EXHIBIT II-1
CONCURRENT ADMINISTRATIVE EVENTS

| ACTIVITY | RESPONSIBILITIES | | ADDITIONAL GUIDANCE |
|---|---|---|---|
| 1. Initiation of Enforcement Activities | SPO, RSPO, and ZONE MGR: | . Assists in initiation of enforcement process, as appropriate<br>. Coordinates with enforcement staff throughout response<br>. Maintains documentation files for future cost recovery | . Cost Recovery Actions Under CERCLA, OEC and OSWER, August 26, 1983<br>. Community Relations in Superfund: A Handbook (interim version), OERR, September 1983 (Chapter 6) |
| 2. Initiation of Preliminary Planning Activities | SPO: | . Acts as chief point of contact in State<br>. Reviews output of planning, as needed | . REM/FIT Zone Contract Management Procedures: An Illustrated Guide, HSCD, April 1983 |
| | RSPO: | . Initiates preliminary planning on as-needed basis<br>. Manages (through REM/FIT contractor) development of planning output<br>. Reviews/coordinates review of planning output | |
| | ZONE MGR: | . Provides assistance, as necessary | |
| 3. Development of the Site-Specific Schedule | SPO, RSPO, and ZONE MGR: | . Individual responsibilities will be defined after specific procedures are are developed. | |
| 4. Development of the Remedial Accomplishments Plan (RAP) | SPO: | . Provides input on site requirements, as necessary | |
| | RSPO: | . Identifies potential obligations in area of responsibility<br>. Drafts descriptions of proposed projects | |
| | ZONE MGR: | . Coordinates HQ review and approval | |
| 5. Development of the Action Memorandum | SPO: | . Provides information/assistance, as necessary | . Appendix B: Action Memorandum Guidance |
| | RSPO: | . Develops Action Memo with SPO input | |
| | ZONE MGR: | . Provides assistance, as necessary | |

## EXHIBIT II-1 (Continued)
## CONCURRENT ADMINISTRATIVE EVENTS

| ACTIVITY | | RESPONSIBILITIES | ADDITIONAL GUIDANCE |
|---|---|---|---|
| 6. Preparation and Review of State Credit Submissions | SPO: | • Submits credit claim to EPA | • Appendix C: Procedures for Processing CERCLA State Credit Claims |
| | RSPO: | • Reviews State credit claim<br>• Makes formal submission to HQ | |
| | ZONE MGR: | • Coordinates recording of unverified and verified credit accounts with CERCLA Credit Coordinator | |
| 7. Intergovernmental Review | SPO: | • Initiates review of projects (State-lead)<br>• Includes review comments in application package,<br>• as appropriate (State-lead) | • Executive Order 12372, Intergovernmental Review of Federal Programs, 47 FR 30959, July 14, 1982<br>• Intergovernmental Review of EPA Programs and Activities, 48 FR 29288, June 24, 1983 (40 CFR 29) |
| | RSPO | • Reviews application package for necessary comments (State-Lead)<br>• Includes review comments in funding package, as appropriate (EPA-Lead) coordenates EPA response to review recommendation and/or comment, as appropriate | • Appendix D: Procedures for Implementing Integrovernmental Review<br>• Notice of Supplemental Procedures for Establishing Start Dates of Comment Period for Activities Subject to Executive Order 12372 (48 FR 54692) |

focused on remedial response and community relations activities proposed for the site. To this end, RAMPs included a detailed statement of work (SOW) for the first phase of remedial response at the site. This SOW, with minimal revisions, could be used in the remedial response agreement covering that phase of site activity. Approximately 250 RAMPs were authorized by the Superfund remedial program.

OERR has recently re-evaluated its preliminary planning process. Revised EPA procedures for planning CERCLA-financed response activities at NPL sites involve integrated site preliminary planning that encompasses remedial, removal, enforcement, and community relations activities. Preliminary planning as currently envisioned will be flexible; its requirements may be tailored to respond to the specific needs or problems of the site in question, the Region, and the State. In keeping with this emphasis on flexibility, the Superfund program will fund preliminary planning activities on a site-specific basis and will no longer require that the resulting report adhere to a rigid format.

Preliminary planning activities may continue to be performed by EPA's Remedial Planning/Field Investigation Team (REM/FIT) contractors. Regional program office personnel will be responsible for initiating, reviewing, and securing approval of the planning outputs according to internal procedures established in each Region. In carrying out these responsibilities, however, Regional program staff should coordinate closely with contractor personnel and Regional and State enforcement, legal, and community relations staffs as well as the SPO, where one has been designated.

## C. DEVELOPMENT OF SITE-SPECIFIC SCHEDULES

Prior to the initiation of remedial activities at a site on the NPL, EPA will, in close coordination with the State, develop a site-specific schedule for the site in question. OSWER requires the development of a schedule for every NPL site. The schedule is a tool which will be used to outline all Superfund activities at NPL sites and show their scheduling through completion of response at the site. These activities include remedial, removal, enforcement, and community relations activities.

Additional guidance and procedures will be developed and issued separately.

## D. DEVELOPMENT OF THE REMEDIAL ACCOMPLISHMENTS PLAN (RAP)

Another event that takes place prior to the execution of a remedial response agreement is the inclusion of a remedial project in the RAP. The Regional accomplishments planning process consists of an Annual RAP and Quarterly RAPs. The Annual RAP is a Region's master plan for Superfund remedial obligations expected to occur during a given fiscal year; Quarterly RAPs provide detailed schedules for each of these expected obligations. After its RAP has been approved, a Region may obligate CERCLA funds for the activities, subactivities, and amendments included in its RAP. RAPs are monitored through the Program Control System (PCS).

Detailed guidance for developing and modifying Annual and Quarterly RAPs can be found in FY84 Regional Superfund Accomplishments Plan, OSWER, August 5, 1983, and Modifying the Remedial Accomplishments Plan (RAP), OSWER, December 30, 1983.

## E. DEVELOPMENT OF THE ACTION MEMORANDUM

Preparation of an Action Memorandum is another important administrative event which may occur prior to the execution of a remedial response agreement. Action Memoranda are documents which Regions can use to secure the Regional Administrator's conceptual approval of the first remedial project to be implemented at a hazardous waste site; a single Action Memorandum may also be used to cover projects at more than one site within a State. Following approval of an Action Memorandum, the proposed project(s) will be undertaken using either a Cooperative Agreement or an EPA-lead agreement. Use of Action Memoranda is discretionary, but is recommended to document Regional concurrences on, and approval of, remedial projects.

Further information on the format of Action Memoranda and an approved example can be found in Appendix B.

## F. PREPARATION AND REVIEW OF STATE CREDIT SUBMISSIONS

Another step taken prior to the development of an agreement between EPA and the State is State identification of any potential credits for which it might be eligible under CERCLA, and subsequent EPA review and audit of the State's claimed credits. Such credits have a direct bearing on the amount of a State's residual cost-sharing obligation for remedial activities at a given site.

Based on the provisions of CERCLA section 104(c)(3)(C), EPA will grant States a credit against their share of costs under a Cooperative Agreement or an SSC for expenditures or obligations that:

- Occurred between January 1, 1978, and December 11, 1980 (the CERCLA credit period)

- Have been properly documented, based on Circular A-87 of the Office of Management and Budget (OMB)
- Represent direct costs, as defined by OMB Circular A-87
- Are eligible for payment under CERCLA, as defined in CERCLA section 111
- Are site-specific
- Were neither used as required match for other Federal programs nor reimbursed by another Federal or State agency or by a responsible party.

Costs that meet these criteria may be counted as State credit, subject to EPA approval. The credit will be site-specific, and may therefore be used only for remedial activities at the site for which it was accrued. A State will not be reimbursed for any credit remaining after remedial implementation at that site has been completed.

To obtain EPA approval on its claimed credit, a State must prepare a credit claim and submit it for review to the appropriate EPA Region prior to or early in the development of a Cooperative Agreement or an SSC. Credit claims should be written in letter form and should follow the procedures detailed in Appendix C. EPA's review and audit procedures are also contained in Appendix C.

## G. INTERGOVERNMENTAL REVIEW

In accordance with OMB Circular A-95, States/applicants in the past submitted applications for Federal assistance to designated clearinghouses for review. This formal review process identified potential duplication of effort or lack of coordination with other State and Federal projects.

On July 14, 1982, the President signed Executive Order 12372, "Intergovernmental Review of Federal Programs." The Order directed OMB to revoke A-95 and to implement a flexible, elective review system relying on State-established procedures. The effective date for implementing regulations and ending the A-95 review system was September 30, 1983. EPA, along with other Federal agencies subject to the Executive Order, published its final rule and related Federal Register notices on June 24, 1983. This rule is 40 CFR Part 29, "Intergovernmental Review of the Environmental Protection Agency Programs and Activities" (48 FR 29288).

Detailed procedures to implement the regulations as they apply to both State and EPA-lead Superfund remedial agreements can be found in Appendix D. For the benefit of concerned individuals, the Appendix defines roles of EPA and State staff, provides reprints of the regulation and associated Federal Register notices, and contains sample letters to formally initiate review of proposed remedial projects.

* * * * *

This chapter has provided information on administrative events which serve as a foundation for the procedures described in the remainder of this document. The next three chapters -- Development of Cooperative Agreement Application Packages (Chapter III), Development of EPA-Lead Remedial Planning Agreements (Chapter IV), and Development of Superfund State Contracts (Chapter V) -- discuss the steps taken while developing draft agreements.

# III. DEVELOPMENT OF COOPERATIVE AGREEMENT APPLICATION PACKAGES

At sites where the State has opted to assume lead management responsibility for a remedial project, an agreement vehicle is needed which can be used to provide funding assistance to the State as well as to document responsibilities and obtain State assurances. A Cooperative Agreement is the appropriate instrument for carrying out these functions. Even where remedial action is managed by EPA, a Cooperative Agreement must be used to provide any EPA funds for sharing in operation and maintenance (O&M) costs.

Most Cooperative Agreements negotiated will be site-specific. However, a State may choose to develop a multi-site Cooperative Agreement which covers remedial investigation/feasibility study projects at more than one site. States also have the option of entering into a single Cooperative Agreement which will cover costs for a State-lead project as well as costs which the State incurs for EPA-lead projects. When the State elects to utilize a single agreement for both purposes, its Cooperative Agreement application must meet the requirements described in this chapter as well as those outlined in Section IV.D of this document.

This chapter describes the activities necessary to develop a Cooperative Agreement application package that will ultimately result in an executed Cooperative Agreement. These procedures are applicable for both site-specific and multi-site Cooperative Agreements.

Exhibit III-1, on the following page, identifies activities and organizational responsibilities for developing a Cooperative Agreement application package. In addition, it shows primary/lead roles for developing a request for a deviation from EPA's General Regulation for Assistance Programs (40 CFR 30) to permit the allowability of costs incurred by the State prior to award of the Cooperative Agreement; a deviation request is sometimes submitted concurrently with the Cooperative Agreement application package. As shown in the exhibit, the State has primary responsibility for developing a Cooperative Agreement application package. The State official who assumes this role -- usually the SPO -- should consult

## EXHIBIT III-1
## DEVELOPMENT OF COOPERATIVE AGREEMENTS

| ACTIVITY | RESPONSIBILITIES | | WORK PRODUCTS |
|---|---|---|---|
| 1. Development of the Cooperative Agreement application package (includes development of the application form, development of agreement provisions, completion of procurement system certification form, and submission of other documents)*/ | SPO: | . Develops Cooperative Agreement application form<br>. Develops Cooperative Agreement provisions<br>. Submits Procurement System Certification Form<br>. Submits Community Relations Plan<br>. Submits certification letter<br>. Submits intergovernmental review comments (where necessary) | . Completed Application for Federal Assistance -- State and Local Nonconstruction Programs (EPA Form 5700-33)<br>. Completed set of provisions as part of Cooperative Agreement application package<br>. Completed Procurement System Certification Form for Applicants for EPA Assistance (EPA Form 5700-48)<br>. Community Relations Plan<br>. Letter from Governor or Attorney General certifying the authority of the official signing the Cooperative Agreement to do so and to make any necessary CERCLA section 104(C)(3) assurances<br>. Intergovernmental review comments and EPA response (if appropriate) |
| | RSPO: | . Provides consultation and technical assistance to the SPO, as requested | |
| | ZONE MGR: | . Supports RSPO, as requested | |
| 2. Deviation Request to Permit the Allowability of Pre-Award Costs | SPO: | . Determines need for deviation request to establish the allowability of costs incurred prior to award<br>. Develops deviation request (where necessary) | . Deviation request<br>. Approved deviation |
| | RSPO: | . Submits deviation request to Regional Administrator for concurrence<br>. Submits approved request to EPA HQ for approval | |
| | ZONE MGR: | . Coordinates HQ concurrences and approval of deviation request | |

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*/This activity is comprised of four distinct steps which are addressed separately in the text. They have been combined in this chart in an effort to simplify the presentation of responsibilities.

closely with EPA's RSPO for that site throughout development of the application package. Additional support is available through the EPA Headquarters Zone Manager.

Exhibit III-2, on the following page, summarizes key requirements of the Cooperative Agreement application package and may be used as a checklist in developing the application package. As shown in this exhibit, the application package consists of the Cooperative Agreement application form (EPA Form 5700-33) and a number of attachments. Each part of the package is discussed in this chapter. In addition, an example of a completed application package is shown in Appendix G.

## A. COMPLETION OF THE COOPERATIVE AGREEMENT APPLICATION FORM

The State must use an Application for Federal Assistance - State and Local Nonconstruction Programs (EPA Form 5700-33) when applying for a remedial Cooperative Agreement under CERCLA. This form consists of five parts:

- Part I - General Summary Information
- Part II - Project Approval Information
- Part III - Budget Information
- Part IV - Project Narrative Statement
- Part V - Assurances.*

General instructions for completing each part are included in the application form.

Additional information on completing Part III - Budget Information and Part IV - Project Narrative Statement is provided in this section. These parts of the application form are subject to remedial program-specific requirements. Part IV is discussed first, since its completion is necessary prior to fully addressing Part III. Other sections are more straightforward and therefore do not require explanation in this document.

### A.1 Part IV - Project Narrative Statement

A Project Narrative Statement has two important components: (1) a brief explanation of the problems and history of the site or sites and (2) a statement of work

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* These assurances are different from, and in addition to, those required under CERCLA section 104(c)(3) and other program requirements.

EXHIBIT III-2

## COOPERATIVE AGREEMENT APPLICATION PACKAGE CHECKLIST

| COMPONENT/ELEMENT | SUBMISSION | GUIDANCE |
|---|---|---|
| 1. Application for Federal Assistance | | |
| . Part I-General Summary Information | . Part I, completed and signed | . 5700-33 Instructions |
| . Part II-Project Approval Information | . Part II, completed | . 5700-33 Instructions |
| . Part III-Budget Information* | . Part III, completed<br>. Detailed budget breakdown | . 5700-33 Instructions<br>. Guidance, Section III.A.2 |
| . Part IV-Project Narrative Statement* | . Site background summary<br>. Statement of work | . Guidance, Section III.A.1<br>. Model SOW in Appendix E |
| . Part V-Assurances | . Part V, completed | . 5700-33 Instructions |
| 2. Cooperative Agreement Provisions | | |
| . General Assistance Provisions | . Provisions stating intent to comply with EPA regulations, statutes, and other general Agency requirements | . 40 CFR 30<br>. 40 CFR 33<br>. Guidance, Section III.B.1<br>. Guidance, Appendix F, Section 1 |
| . Superfund Program Provisions | . CERCLA section 104(c)(3) assurances<br>. Provisions stating intent to follow other program requirements | . Guidance, Section III.B.2<br>. Guidance, Appendix F, Section 2 |
| 3. Procurement System Certification | . Completed EPA Form 5700-48 | . 5700-48 Instructions<br>. Guidance, Section III.C |
| 4. Other Submissions | | |
| . Community Relations Plan (CRP) | . Draft CRP included in draft application package; final CRP in final application package | . Guidance, Section III.D.1<br>. Guidance, Appendix K |
| . Certification Letter | . Letter signed by Governor or Attorney General (or designee) certifying that agency entering into the C/A has authority to do so and to make the assurances required by CERCLA section 104(c)(3) | . Guidance, Section III.D.2<br>. Guidance, Appendix J |
| . Intergovernmental Review Comments | . Comments included, as appropriate | . 40 CFR 29<br>. Guidance, Section II.G<br>. Guidance, Section III.D.3 |

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*For multi-site Cooperative Agreements, the State should submit individual budget breakdowns and project narrative statements for each project to be included under the Agreement.

(SOW). The exposition of problems and history will be specific to each agreement and is therefore not discussed here in detail; however, it should include a site chronology, for each site covered by the Agreement, which highlights past removals and emergency actions taken at the site and outlines any coordination necessary. Conversely, the format of a SOW should be similar for many sites and is therefore discussed below.

The SOW describes the purpose and scope of activities and tasks to be carried out as a part of the proposed project. When the Cooperative Agreement covers work at more than one site, a separate SOW should be submitted for each site-specific project to be undertaken in addition to a SOW for the overall management and coordination activities. For each activity/subactivity, the SOW should include a description of necessary subactivities/tasks with estimated start and completion milestones. Where appropriate, the SOW should also identify outputs and may contain cost estimates for each subactivity and task.

In general, the SOW for a remedial investigation/feasibility study can be obtained from one of three sources:

- The RAMP, if one has been prepared
- The REM/FIT contractor, as the output of a special task order from Regional program office personnel
- The State, which can prepare it through a contractor or using State staff.

If State staff prepare the SOW for inclusion in the Cooperative Agreement application, it can be based on the model SOW shown in Appendix E. For remedial design projects, the conceptual design requirements contained in the feasibility study can serve as the basis for SOW development. The SOW for a remedial action will normally be prepared as part of the remedial design.

### A.2 Part III - Project Budget

Sources of information for developing the project budget will vary, depending on the type of project in question. The proposed budget for a remedial investigation/feasibility study project may be based upon the cost estimates in the RAMP, if available, upon cost estimates developed by the REM/FIT contractor, or upon modified standard cost estimates. If the State uses standard costs to develop its project budget, persons in the State or Region with knowledge about the site in question should be consulted so that the standard costs can be altered to reflect site conditions and the project at hand. For remedial design and remedial implementation activities, the proposed project budget is normally developed simultaneously with the SOW; the chart in Exhibit III-3, on the following page, can be used to assist the State in estimating total remedial implementation project costs. In any case, the budget should identify total project costs for all activities, subactivities, and tasks to be completed. When the Cooperative Agreement is designed to cover projects at more than one site, individual budget breakdowns should be submitted for each project to be undertaken.

The project budget should be displayed in the Cooperative Agreement application package both in summary form and in detail. Using the budget formats included in Part III of the application, Project Budget Information, the applicant should summarize Federal and State costs for each proposed activity and subactivity; appropriate activity codes and their associated subactivities can be found in Exhibit N-1 in Appendix N. Management costs can be included in this budget breakdown, but total management costs, including those associated with the individual activities listed, should generally not exceed the guidelines of 8-12 percent of project costs. The applicant should also identify costs for each activity and subactivity in the application by object class category (e.g. personnel, travel, contractual, etc.); appropriate object class categories for use in completing the Cooperative Agreement application are shown in Exhibit III-4, following Exhibit III-3.

To assist EPA staff in determining whether proposed costs are reasonable and meet applicable EPA requirements, the State should attach to the application form a detailed project budget, showing estimated costs for each proposed task. This attachment should also contain detailed information on elements of object class categories. Exhibit III-5, following Exhibit III-4, shows the appropriate level of detail for each object class category; an example can be found in Appendix G.

### A.2.a Allowable Costs

The State should ensure that costs to be included in the application are allowable for payment under CERCLA. To be allowable, proposed costs must be consistent with

## EXHIBIT III-3
## FIGURES FOR USE IN ESTIMATING TOTAL STATE-LEAD REMEDIAL ACTION COSTS

| ITEM | REM. ACTION ESTIMATES LESS THAN $2,000,000 | REM. ACTION ESTIMATES GREATER THAN $2,000,000 |
|---|---|---|
| Supervision and Administration | 8% | 6% |
| Engineering and Design Support During Construction | 1.5% | 1% |
| Contingencies* | 10% | 8% |
| TOTAL** | 19.5% | 15% |

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* Contingency rates are applied to total project costs, including overhead and profit.

** Supervision and administration figures shown apply to costs for State personnel, travel, etc., not covered by the contractual object class category (except where the State will let contracts for these functions); other items shown will normally be covered by contractual and/or construction categories, except when conducted in-house.

EXHIBIT III-4

## OBJECT CLASS CATEGORIES FOR USE IN COMPLETING THE COOPERATIVE AGREEMENT APPLICATION

| CATEGORY | CONTENT |
|---|---|
| Personnel | • The State may include the costs of all wages paid to State employees who are, for example:<br>- engaging in response activities<br>- directly managing State employees engaged in response<br>- managing subagreements awarded under the Agreement.<br>These costs can be calculated on either a percentage of time or level of effort basis. |
| Fringe Benefits | • The State may include fringe benefits for State employees, calculated as a fixed percentage of salary or by some other agreed-upon method. |
| Travel | • The State may include costs incurred by State employees for travel necessary for the conduct of the proposed remedial activities. |
| Equipment | • The State may include the purchase price of any necessary equipment that it will furnish, less its residual value after the completion of the project. If equipment costs are based on usage rates, the State must:<br>- use a standard depreciation usage method<br>- document initial costs, expected life, and residual value in accordance with OMB Circular A-102, Attachment N. |
| Materials and Supplies | • The State may include the purchase price of any necessary materials and supplies it will furnish. |
| Contractual Services | • The State may include all costs associated with reimbursing contractor services, including direct and indirect contractor costs and a reasonable profit. These costs, to the extent possible, should be limited to personal services and nonconstruction contracts (see 40 CFR Part 33 and OMB Circular A-87).* |
| Construction | • The State may include all costs associated with reimbursing contractor services, including direct and indirect contractor costs and a reasonable profit. These costs, to the extent possible, should be limited to construction contracts (see 40 CFR Part 33 and OMB Circular A-87).* |
| Other Direct Costs | • The State may include other direct costs, such as equipment rental, real property purchase, and miscellaneous costs. If the State purchases real property, it must agree to comply with the property requirements of 40 CFR Part 30. |
| Indirect Costs | • The State may include indirect costs. |

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*In accordance with the Prompt Payment Act (PL 97-177), however, Federal funds may not be used for payment of interest penalties to contractors when bills are paid late.

## EXHIBIT III-5

## ITEMIZATION OF OBJECT CLASS CATEGORIES: APPROPRIATE LEVEL OF DETAIL

| CATEGORY | INFORMATION TO BE SHOWN |
|---|---|
| Personnel | • Positions of staff required<br>• Number of hours necessary<br>• Salary of staff (annual or hourly rate)<br>• Estimates of personnel costs, by position |
| Fringe Benefits | • Basis (percentage or other) upon which fringe benefits are calculated<br>• Estimates of fringe benefit costs, by position |
| Travel | • Purpose and estimated number of trips<br>• Starting point and destination<br>• Transportation method<br>• Per diem while on travel<br>• Number of persons traveling<br>• Estimated cost per trip |
| Equipment | • Number and type(s) of equipment to be purchased<br>• Price of each piece |
| Materials and Supplies | • Type(s) of materials and supplies to be furnished<br>• Total prices |
| Contractual Services | • Estimated number of personal services for nonconstruction contracts to be let<br>• Nature of contract services<br>• Estimated total costs for each contract* |
| Construction | • Estimated number of construction contracts to be let<br>• Nature of contract services<br>• Estimated total costs for each contract* |

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*It is recommended that estimates be sufficient to allow for unforeseen costs and contingencies which may occur during contract performance.

section 111 of CERCLA and with Federal cost principles outlined in the OMB Circular A-87, "Cost Principles for State and Local Governments." The State may also seek assistance from the RSPO in determining which costs may be allowable. Final determination of the reasonableness of the cost estimates in the application will be made by the EPA Award Official.

### A.2.b Enforcement Costs

Certain enforcement costs attributable to site-specific activities are allowable under CERCLA, according to OSWER guidance. Among specific enforcement costs that may be included in the project budget are those associated with identification of responsible parties, investigation, gathering of evidence, and preparation of expert witness testimony. Enforcement costs that may not be included in the project budget are those directly attributable to litigation and to overall enforcement program management, including court costs and legal fees. For background on EPA's policy in this area, see "Payment of State Enforcement Costs Under Superfund," OSWER, January 21, 1983, contained in Appendix P of this document.

### A.2.c Calculation of State Cost Share

To complete the project budget for Part III of the Cooperative Agreement application form, the State must identify both the Federal and non-Federal (if any) costs for each activity. Current EPA policy is to not require State cost-sharing for remedial planning (remedial investigation/feasibility study and remedial design) at privately-owned sites (see "Waiver of 10 Percent Cost Share for Remedial Planning Activities at Privately-Owned Sites," OSWER, May 13, 1983, included in Appendix P). CERCLA section 104(c)(3)(C) requires a State to provide 10 percent of the costs for remedial implementation at privately-owned sites and at least 50 percent of response costs (including removals and remedial planning costs) at publicly-owned sites. However, provision of a State's cost-sharing obligation is required only in an Agreement covering CERCLA-funded remedial implementation; no cost-sharing is required for a Cooperative Agreement covering only remedial planning, regardless of site ownership.

Once EPA, after consultation with the State, has determined the appropriate cost-sharing percentage, if any, the State should multiply the total cost of the project by this figure to identify the total State share. (If this is a publicly-owned site and the project involves remedial implementation, the State should also add its share of removal and remedial planning costs to arrive at its total share.) Then the State should subtract any available State credit (see Section II.F and Appendix C of this guidance for further discussion of State credits), up to 100 percent of the State share, to determine its remaining cost-sharing obligation for the project. The Federal share is the difference between total project costs and the State's share. The State should identify these costs and note the use of any credit in the appropriate sections of Part III of the application form -- Project Budget. For the benefit of State staff, examples of these calculations are shown in Exhibit III-6, on the following page.

Prior to the May 13, 1983 rescission of the 10 percent cost-sharing policy, States shared in remedial planning costs at some privately-owned sites. Under current EPA policy, any cost shares previously paid by the State (allowable State services, statutory credit, or cash) for these activities may be applied to the State's cost-sharing obligation during remedial implementation at the site. Such cost shares may have been included in the Cooperative Agreement budget under the previous EPA policy. If the State provided remedial planning cost share prior to the May 13 decision, the State may apply this toward its ultimate cost share during remedial implementation.

## B. DEVELOPMENT OF COOPERATIVE AGREEMENT PROVISIONS

Cooperative Agreements for remedial response at sites under CERCLA are subject to a number of legal and administrative requirements that affect the implementation of the project funded. The State should address each of these subjects, as appropriate, in provisions included in its Cooperative Agreement application package. After the State has submitted its application, the RSPO should discuss with the State any requirements not adequately addressed and should meet them through the addition of appropriate special conditions to the Cooperative Agreement. Types of requirements fall into two broad categories: general assistance provisions and program provisions, both of which are discussed below. Specific examples can be found in Appendix F.

### B.1 General Assistance Requirements

Superfund remedial Cooperative Agreements are subject to certain general Agency requirements which apply to all applications for financial assistance from EPA. One of

# EXHIBIT III-6
## STATE COST SHARE CALCULATIONS
(for remedial implementation projects)

**Example 1**

Total remedial implementation cost = $550,000
State cost-sharing percentage = 10 percent (privately-owned site)
State credit = none

- Total remedial implementation cost x State cost-sharing percentage = State Cost Share
  $550,000 x 10 percent = $55,000

The State is required to contribute $55,000 in cash or services; EPA will provide the remaining $495,000 for the remedial implementation.

**Example 2**

Total remedial implementation cost = $550,000
State cost-sharing percentage = 10 percent (privately-owned site)
State credit = $35,000

- Total remedial implementation cost x State cost-sharing percentage = State Cost Share
  $550,000 x 10 percent = $55,000
- State cost share - State credit = State Obligation
  $55,000 - $35,000 = $20,000

The State is required to contribute $20,000 in cash or services; the remainder of the State cost share is met by applying the State credit. EPA will provide $530,000 for the remedial implementation.

**Example 3**

Total remedial implementation cost = $550,000
State cost-sharing percentage = 50 percent (publicly-owned site)
State cost share for remedial planning = $50,000
State credit = $350,000

- Total remedial implementation cost x State cost-sharing percentage = State Cost Share for Remedial Implementation
  $550,000 x 50 percent = $275,000
- Remedial planning cost share + Remedial implementation cost share = Total State Cost Share
  $50,000 + $275,000 = $325,000
- Total State cost share - State credit (up to 100 percent of State cost share) = State Obligation
  $325,000 - $325,000 = 0

EPA funds 100 percent of all project costs under the Cooperative Agreement. Of the $350,000 credit, $325,000 has been applied, leaving $25,000 available for future cost-sharing. The State will not be reimbursed for the $25,000.

these is EPA's General Regulation for Assistance Programs (40 CFR Part 30). This regulation explains the manner in which a State must manage a project performed under a Cooperative Agreement and outlines other responsibilities that the State must assume following award of funds.

Also among general assistance requirements is Procurement Under Assistance Agreements (40 CFR Part 33), EPA's regulation for any procurements made under a Cooperative Agreement; key points of this regulation are summarized in Exhibit III-7, on the following page.* In considering procurement requirements, the State should be sure to address the provisions of section 33.240, which establish six affirmative steps that States must take to ensure that small and disadvantaged businesses are used, when possible, as sources of supplies, construction, and services. These requirements have been reinforced by Executive Order 12432, Minority Business Enterprise Development, signed by the President on July 14, 1983. Executive Order 12432 reiterates the Federal government's commitment to small and disadvantaged business by setting forth a program aimed at developing such enterprises. Procedures developed under the Executive Order stipulate that EPA will establish "Fair Share" objectives for awards to minority (MBE) and women's (WBE) business enterprises; that the State must set its own objectives and must advertise them in all Requests for Proposal and Invitations for Bids; and that the State must report, on a quarterly basis, on its utilization of MBEs and WBEs. These requirements apply to all Superfund Cooperative Agreements, including those awarded by the remedial program.

The State should address all general assistance requirements in its Cooperative Agreement application by including applicable provisions. Specific requirements, additional background information, and examples of acceptable provisions can be found in Section 1 of Appendix F.

### B.2 Superfund Program Requirements

In addition to the general EPA assistance and procurement requirements, there are program-specific requirements for Cooperative Agreements awarded under CERCLA. Provisions addressing these requirements are necessary to assure compliance with CERCLA statutory requirements and Superfund program policy and procedures. These provisions are summarized in Exhibit III-8, following Exhibit III-7.

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* Development of the Procurement System Certification Form, one requirement of this regulation, is discussed in the following section of this chapter.

EXHIBIT III-7
SUMMARY OF REQUIREMENTS FOR PROCUREMENT UNDER
ASSISTANCE AGREEMENTS (40 CFR 33)

| TITLE | SUMMARY OF REQUIREMENT | SECTION |
|---|---|---|
| Recipient Responsibility | System must ensure that contractors perform in accordance with all applicable contract requirements | 33.210 |
| Submission of Information | Recipient must inform Award Official of construction subagreements totalling over $10,000 per year | 33.211 |
| Limitation on Subagreement Award | System must consider listed factors in determining contractor responsibility | 33.220 |
| Competition | System must have procurement transaction procedures which provide maximum open and free competition | 33.230 |
| Profit | System procedures must allow only fair and reasonable profits to contractors | 33.235 |
| Small, Minority, Women's, and Labor Surplus Area Businesses | System must award a fair share of sub-agreements to such businesses according to six affirmative steps specified | 33.240 |
| Documentation | System must require that procurement records and files for purchases over $10,000 include items specified | 33.250 |
| Specifications | System procedures for establishing specifications must meet the requirements listed | 33.255 |
| Bonding and Insurance | System procurements must meet the specified requirements | 33.265 |
| Code of Conduct | System must have a written code of standards of conduct for State officials in dealing with contractors | 33.270 |
| Federal Cost Principles | System procedures for determining allowable costs must meet the specified principles | 33.275 |
| Prohibited Types of Subagreements | System may not allow cost-plus-percentage-of-cost (multiplier) or percentage-of-construction types of contracts | 33.285 |
| Cost and Price Considerations | System procedures must allow for consideration of cost and price, as specified | 33.290 |
| Lower Tier Subagreements | System must provide that subagreements below the first tier comply with all provisions specified | 33.295 |
| Small Purchase | System small purchase method must meet specified requirements | 33.305-315 |
| Formal Advertising | System procedures relating to formal advertising, including those for bidding documents and contract awards, must meet the specified requirements | 33.405-430 |
| Competitive Negotiation | System procedures for competitive negotiation must meet the specified requirements | 33.505-535 |
| Noncompetitive Negotiation | System procedures for noncompetitive negotiation must meet the specified requirements | 33.605 |
| Requirements for Recipients of Remedial Action Cooperative Agreements under CERCLA | Subpart requires use of formal advertising for remedial action construction procurements unless determined not to be appropriate (not applicable for remedial planning or for engineering services) | Subpart E |
| Subagreement Provisions | Subpart includes the clauses which must be contained in subagreements for procurement | Subpart F |
| Protests | Subpart applies to all applicants for EPA assistance except non-profit organizations | Subpart G |

## EXHIBIT III-8
## SUMMARY OF SUPERFUND PROGRAM PROVISIONS FOR COOPERATIVE AGREEMENT APPLICATIONS

| SUBJECT | DESCRIPTION |
|---|---|
| CERCLA Section 104(c)(3) Assurances | Applications proposing remedial action must contain assurances that State will provide all future operation and maintenance and an off-site facility, if applicable |
| State Credit | If State uses credit to provide some of its cost share, this is documented; if credit is not verified, State agrees to EPA adjustment in cost share, if needed following verification |
| Fund Balancing | Provision that funding future activities at a site is dependent upon the need to respond at other sites and that EPA is not obligated to fund further activities |
| Development of Recommendations According to NCP | State agrees to develop feasibility study recommendations in accordance with the NCP |
| Floodplain Requirements | State agrees to evaluate potential effects of remedial action in the floodplain, pursuant to Executive Order 11988 (used when site is located in a floodplain) |
| Duties of the RSPO and SPO | State and EPA specify relevant duties of the SPO and RSPO |
| Site Access and Permits | State agrees to secure site access and permits necessary to conduct the project |
| Community Relations Plan | State agrees to allow period for public comment on recommendations of feasibility study; State also assures that CRP will be implemented during remedial response |
| Site Safety Plan | State agrees to submit Site Safety Plan to EPA prior to beginning on-site activities |
| Access to Files | State agrees to allow EPA access to its site files and to designate confidential information |
| Reporting Requirements | State agrees to submit quarterly reports on site progress to RSPO for review |
| Submission of Documents | State agrees to forward site-specific documents to RSPO for review during progress of activities |
| Responsible Party Activities | EPA and State agree to modify the Agreement if responsible parties will perform or pay for the performance of activities |
| Conflict of Interest | State agrees to require potential contractors to submit information on responsibility for the site |
| Emergency Response | State agrees that remedial activities may be suspended if emergency response is required |
| Negation of Agency Relationship | State agrees that no relationship of agency exists between EPA and State in response activities |
| Notice of Settlement | EPA and State agree to notify each other before settlement with or action against responsible party |
| Cooperation and Coordination in Cost Recovery Efforts | EPA and State agree to coordinate and cooperate in future cost recovery efforts |
| U.S. District Court | EPA and State agree to file future CERCLA cost recovery actions in appropriate U.S. District Court |
| Litigation Under CERCLA Section 106 or 107 | State agrees that Cooperative Agreement does not prohibit EPA from filing litigation against responsible party under section 106 or 107 of CERLCA |
| Sharing in Cost Recovery | State agrees to share recovered costs with EPA in proportion to EPA's participation in remedial response under CERCLA (used only where the State has filed a cost recovery action) |

The SPO should discuss these Superfund program needs with the RSPO while developing the Cooperative Agreement application package to determine which requirements apply to the proposed activities and site conditions. Requirements should be addressed in the application on a site-specific basis, as appropriate. Where the application package is deficient, OERR needs will be met by the addition of special conditions to the Cooperative Agreement prior to award.

Appendix F contains background information on program-specific requirements and sample language for special conditions which may be used to address those requirements. The State may adapt this language for use in provisions to be included in its Cooperative Agreement application, but salient points must be adequately addressed. In addition, the subjects of several of these provisions are discussed in detail below.

### B.2.a Provision of CERCLA Section 104(c)(3) Assurances

Section 104(c)(3) of CERCLA requires the State to make three separate assurances concerning a remedial action: provision of off-site treatment, storage, or disposal, responsibility for operation and maintenance (O&M), and cost-sharing. These assurances, if necessary for the project in question, must be documented in the State's Cooperative Agreement application package.

When the SOW in the application contains a remedial action that requires off-site treatment, storage, or disposal, the State must include an assurance that it will locate and enter into an agreement with an appropriate facility for treatment, storage, or disposal of site wastes.

When the SOW in the application contains a remedial action that requires O&M, the State must include an assurance that it will assume responsibility for all O&M for the life of the remedy. In such cases, the SOW should also include as a task the development of an O&M plan, which should at least contain the following elements:

- Designation of the organizational unit of the State government responsible for O&M
- Identification of the availability of State funding mechanisms for O&M activities
- Milestone dates for assuming O&M responsibility

- Description and duration of O&M activities
- Summary of O&M staffing needs
- Summary of O&M performance standards
- Contingency plan for handling abnormal occurrences
- Safety requirements for O&M activities
- Equipment and material requirements
- Estimates of annual O&M costs
- Description of site use and disposition of facilities following completion of O&M.

In addition, the appropriate remedial implementation subagreement under the Cooperative Agreement must include a provision that the contractor is responsible for project startup and for certifying that the designed remedy is functional and operational. After this has been done, EPA may, for up to one year, provide assistance to the State for project O&M at the same rate of cost share as for the remedial action. The Cooperative Agreement covering the remedial action may be amended to remain in effect until the end of EPA's O&M support. After that period, the State will be expected to assume responsibility for all project O&M costs.

States may provide off-site and O&M assurances for more than one site in the State through a single letter. A copy of such a letter should be attached to each appropriate Cooperative Agreement application. O&M plans, however, must be site-specific.

Where State cost-sharing is required, the State provides its cost-sharing assurance by showing its share of project costs in the project budget sheets.

### B.2.b The National Environmental Policy Act of 1969 (NEPA)

NEPA establishes a national policy requiring Federal agencies to incorporate environmental factors into their decision-making processes. Superfund remedial activities are exempt from the provisions of NEPA because CERCLA and the NCP require the program to perform the "functional equivalent" of NEPA requirements.

To assure functional equivalency, EPA must assess both proposed actions and reasonable alternatives in terms of their environmental effects, and obtain comments on the alternatives from concerned members of the public. The State should consider these requirements in developing its application. The first requirement can be fulfilled by conducting an environmental assessment during the course of remedial planning activities, as required by section 300.68(i)(2) of the NCP, while the second can be met through implementation of a Community Relations Plan that provides for a minimum three-week comment period for feasibility studies and for a minimum two-week comment period for expedited feasibility studies.* For more details, see Community Relations in Superfund: A Handbook, (interim version), OERR, September 1983, and the sample CRP in Appendix K.

### B.2.c Quality Assurance/Quality Control (QA/QC)

In all environmental sampling and/or analysis conducted as part of the project, the State must meet Superfund program QA requirements, among which are the following:

- Data produced must be able to withstand the scrutiny of litigative proceedings; this requires appropriate chain-of-custody, document control, and QA/QC documentation
- Data collection must be cost-effective; costs of generating the data cannot significantly exceed costs associated with similar analyses provided by the National Contract Laboratory Program
- Data turnaround times must meet remedial program needs.

In addition, a QA project plan must be developed in accordance with "Guidelines & Specifications for Preparing Quality Assurance Project Plans (QAMS-005/80)." Preparation of this plan may be a task under the Cooperative Agreement, performed either by in-house personnel or by a State contractor. The QA plan must be reviewed by the EPA Regional QA officer and the RSPO and approved by the Award Official before any sampling can begin for the project. A sample QA plan is provided in Appendix L.

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* Expedited feasibility studies are used only for IRMs.

EPA's existing National Contract Laboratory Program can be used to conduct necessary environmental sampling and analysis, or the State may use its own facilities for these purposes. In either case, the State should identify in its application those laboratory facilities that it intends to use. The Users Guide to the EPA Contract Laboratory Program provides a breakdown of the types of analytical services provided by the National Contract Laboratory Program; this manual can be used for purposes of comparison with the facilities to which the State has access.

### B.2.d Site Safety Plan

Under a Cooperative Agreement, the State is required to have a site safety plan providing for the protection of on-site personnel and area residents. This plan may either be prepared by State personnel or may be included in the SOW as part of the project and undertaken by a State contractor. The safety plan must be consistent with the following:

- CERCLA sections 104(f) and 111(c)(6)
- EPA Order 1440.2 - Health and Safety Requirements for Employees Engaged in Field Activities
- EPA Order 1440.1 - Respiratory Protection
- EPA Occupational Health and Safety Manual
- EPA Interim Standard Operating Safety Guide (September 1982)
- Applicable OSHA standards
- State safety and health statutes
- Site conditions.

This plan must be included in all subagreements awarded under the Cooperative Agreement and must be implemented by both State and contractor personnel on the site. A sample site safety plan is shown in Appendix M.

Whether the safety plan is developed by the State or its contractor, it should be submitted to the RSPO for review. This may be done simultaneously with the application or after the application has been approved. Review assistance is available to the RSPO from EPA-certified On-Scene Coordinators or from the National Response Team, Edison, New Jersey (FTS 340-6745).

### B.2.e Expedited Procurement

When undertaking the lead for remedial planning, the State is encouraged to expedite necessary procurement. Under normal circumstances, procurement actions for remedial planning may require several months to complete. Exhibit III-9, on the following page, describes four suggested alternatives for expediting the initiation of remedial planning. These should be considered on a site-by-site basis, as appropriate. Additional information on expedited procurement is provided in "Guidance for State Contracting of Remedial Planning Activities," OSWER, February 22, 1983, and "Class Deviation From 40 CFR 33.510 and 33.515 for Certain Activities Conducted Under the Authority of CERCLA," GAD, November 18, 1983, both included in Appendix P.

## C. COMPLETION OF PROCUREMENT SYSTEM CERTIFICATION FORM

One requirement of EPA's procurement regulation is that each application for assistance must be accompanied by a completed Procurement System Certification Form for Applicants for EPA Assistance (EPA Form 5700-48). This requirement applies to CERCLA remedial Cooperative Agreements. Therefore, the State must include a signed original of this form in its application package.

To complete the Procurement System Certification Form, the State should determine whether its procurement system meets the requirements of EPA's procurement regulation (40 CFR Part 33) and must certify on the form whether its procurement system does or does not meet the intent of this regulation. If the State is certifying its system for the first time (or is not certifying its system), a responsible official should complete Part B of the form. If the State does not certify its system, the State must indicate that its procurement activities will be conducted in accordance with the requirements of Part 33, with EPA review and pre-award approval of proposed procurement actions. States that provide certification will not receive this level of procurement oversight by EPA; however, EPA reserves the right to review any State procurement action funded wholly or in part by EPA.

A State must certify its system to EPA only once every two years. If the State has previously provided its required certification, a responsible official should complete Part A of the Certification Form, indicating the month and year in which this certification was submitted.

EXHIBIT III-9

## METHODS FOR EXPEDITING PROCUREMENT*

| TYPE | SUMMARY |
|---|---|
| Options Contract for Site Remedial Planning Activities | The State includes both remedial planning and remedial action in the initial Cooperative Agreement. Following completion of the RI/FS and selection of a remedy, remedial design and remedial action are funded by amendment. The State's request for proposals (or similiar documents) for engineering services also covers all remedial phases, but should indicate that only RI/FS activities will be funded, with an option to conduct the design and remedial action engineering services subject to the availability of funds. |
| Pre-Award Procurement | The State starts procurement activities such as issuing requests for proposals, negotiations, and selection of a qualified firm before the award of the Cooperative Agreement. A procurement contract can then be signed immediately after the award of funds. State personnel costs prior to award are not allowable; however, these costs should not be significant. |
| Procurement for Multiple Site Planning | States with numerous sites and available funding for cost-sharing may issue a level of effort type contract similar to EPA's REM/FIT contracts. Once in place, site planning activities could be started immediately following the award of an individual Cooperative Agreement, without the need for site-specific procurement actions. |
| Procurement Using Prequalification | The State may compile a list of available contractors by requesting qualifications from firms capable of performing remedial planning activities. The list of prequalified firms will then be used to solicit site-specific proposals. However, prequalification procedures must ensure adequate competition. |

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*All methods shown must be consistent with EPA's procurement regulation, 40 CFR Part 33.

## D. OTHER SUBMISSIONS

The remainder of the Cooperative Agreement application package is made up of the three submissions described below.

### D.1 Community Relations Plan (CRP)

The CRP is a management and planning tool outlining the specific community relations activities to be undertaken during the remedial response. It is designed to provide for two-way communication between the affected community and the agencies responsible for conducting a response action. CRPs may be prepared either by EPA or the State, either in-house or through contract assistance.

A draft CRP for State-lead remedial activities must be submitted for review along with the draft Cooperative Agreement application. This draft CRP will form the basis of the complete CRP which must be submitted with the final Cooperative Agreement application package covering a remedial investigation/feasibility study.

### D.1.a Draft Community Relations Plan

Before developing the CRP, the agency responsible for the community relations program should conduct informal discussions with interested citizens and local officials in the site area. These on-site discussions are required to assess the nature and level of citizen concern and determine how the remedial response may affect local citizens.

Following completion of the on-site discussions and assessment of citizen concern, a draft CRP is prepared. The following elements are essential components of a draft CRP:

- Description of the site's background, including an explanation of the nature of the threat to the public health, welfare, and the environment and a description of any response actions taken to date
- Background and history of community involvement, including a description of past and ongoing community activities and media coverage at the site, key issues of community concern, and an evaluation of the level of citizen concern

- Description of the site-specific objectives of the community relations program during the remedial investigation/feasibility study, including a list of the objectives and a preliminary description of community relations activities considered for the site
- Description of any immediate community relations activities recommended prior to approval of the complete CRP
- A mailing list of affected and interested groups and individuals with their affiliations, addresses, and telephone numbers
- The date the draft CRP was prepared and a schedule for completing the CRP.

### D.1.b Complete Community Relations Plan

The complete CRP updates the information in the draft CRP and specifies the mechanisms for a minimum three-week public comment period for review of the feasibility study prior to the selection of the recommended alternative. For any initial IRMs, the plan must also (1) address how the community will receive notification prior to any site action, and (2) state that a minimum two-week comment period will be provided. In addition, the complete CRP should include the following elements:

- A detailed description of community relations activities and techniques to be used in each phase of the response to keep the community informed and to elicit citizen input
- Charts containing a work plan and implementation schedule of activities at the site
- Budget and staffing plan for the community relations program
- An appendix containing the names, telephone numbers, and addresses of public officials, interested groups, and individuals, contractors, Federal, or State staff responsible for the site.

For a more complete description of the CRP and the community relations program, refer to Community Relations in Superfund: A Handbook, (interim version), OSWER, September 1983, and the sample CRP presented in Appendix

K. In addition, the RSPO, the Regional Superfund Community Relations Coordinator (RSCRC), and the OERR Headquarters Community Relations staff are available to provide information and assistance, if required.

## D.2 Certification Letter

The State should submit a letter with the Cooperative Agreement application package certifying that the State agency submitting the application has the authority both to enter into a Cooperative Agreement with EPA and to make any CERCLA section 104(c)(3) assurances that are necessary for the completion of the project. This certification letter may be from either the State's Governor or Attorney General.

Such a letter need not be site-specific; the State may prepare one letter applying to all of its NPL sites and submit a copy with each application (see sample certification letters in Appendix J). However, if the State chooses to exercise this option, it has the affirmative obligation to inform EPA of any changes in State law or policy that affect its certification letter and to provide a new certification letter, where appropriate. Any specific details on provision of O&M should be supplied in the State's O&M plan.

## D.3 Intergovernmental Review Comments

The final component of the Cooperative Agreement application package is the intergovernmental review comments. If the State has developed a review process which includes Superfund Cooperative Agreement applications, the SPO should include in the application package any review comments and EPA's response to them. EPA will award a Cooperative Agreement only after receipt of the review comments if the program is covered by the process, unless the State process has no comments. If the application has not been subjected to formal review, but affected local officials have responded to direct notification, the SPO may include these comments in the application package, as appropriate.

## E. DEVIATION REQUESTS TO PERMIT THE ALLOWABILITY OF PRE-AWARD COSTS

In some situations the State may need to incur costs included in the Cooperative Agreement prior to award of the actual Agreement. Under EPA's general assistance regulation, such costs are normally not allowable toward the State's cost-sharing obligation, nor may they be paid with Federal funds. For these costs to be allowable, the State must request, and the EPA Headquarters Grants Administration Division (GAD) approve, a deviation from the provisions of 40 CFR 30.308 of the assistance regulation.

The general assistance regulation stipulates that a deviation may be granted only by the Director, GAD. GAD will not consider a deviation request unless it has been referred, with recommendations, by the Regional Administrator (or his/her designee) and has received the concurrence of the Director, OERR. Regional staff should review a deviation request only after a Cooperative Agreement application has been filed and an allocation made by the AA, SWER through approval of the RAP.

To obtain a deviation, the State should prepare a formal written request. This request should be addressed to the EPA Regional Administrator, through the RSPO, and should include the following information:

- The name of the State program, assistance agreement identification number, date of award, and dollar value of application or award
- The section of the regulation from which the deviation is requested (30.308 if the deviation is for pre-award costs)
- A complete description of the purpose of the deviation and the circumstances which make it necessary
- A statement whether the same or a similar deviation has been previously requested and, if such a request has been made, an explanation of the purpose and outcome of the previous request.

The deviation request may be submitted concurrently with, or subsequent to, the Cooperative Agreement application package.

The RSPO, upon receipt of the request, should coordinate a Regional review and transmit necessary concurrences to the Regional Administrator. If the Regional Administrator (RA) concurs on the deviation request, it will be sent to the Headquarters Zone Manager to obtain the concurrence of the Director, OERR. If the RA does not concur, a written explanation for non-concurrence should be sent to the State.

The Zone Manager will coordinate the Headquarters concurrence process. If the Director, OERR concurs, the deviation request will be forwarded to the Director, GAD for action. If the Director, OERR does not concur, a written explanation of non-concurrence will be sent to the RA.

Upon review and approval of the request by the Director, GAD, the State will be notified that it may incur costs subject to the determination of allowability, and a special condition documenting the deviation will be added to the Cooperative Agreement. The State will be notified in writing if the request is denied.

* * * * *

After carrying out the steps identified in this chapter, the SPO should have a completed Cooperative Agreement application package that is ready to be submitted to the EPA Region for draft review. The checklist provided as Exhibit III-2 should be helpful in assembling the draft application package. For procedures on submitting the application package for review and obtaining necessary approvals, see Chapter VI.

## IV. DEVELOPMENT OF EPA-LEAD REMEDIAL PLANNING AGREEMENTS

When EPA has lead responsibility for remedial response at a site and CERCLA section 104(c)(3) assurances are not required (i.e., for remedial planning), two options are available for initiating the project: the State may submit a letter requesting that EPA undertake remedial activities at the site, or EPA and the State may enter into a Memorandum of Understanding (MOU). It is left to the discretion of Regional and State staff to select the appropriate vehicle for the project at the site in question. Factors which may influence this decision include the complexity and cost of the project, characteristics of the site, the need for rapid initiation of the project, and requirements of both State and EPA Regional officials. Either type of agreement may be used at both publicly-owned and privately-owned sites.

The less complex of these options is the State letter of request. This letter should be addressed from the director of the State agency responsible for hazardous waste sites to the Regional Administrator, requesting that EPA initiate remedial planning at the site. It should refer to and approve the anticipated remedial project and should stipulate that:

- The State will participate in community relations activities associated with the project
- The State will secure site access and any required permits
- Representatives of the State will meet with EPA Regional personnel to discuss progress of the project and, if required, exchange site information
- In the case of a publicly-owned site, the State will pay 50 percent of all response costs at the time CERCLA-funded remedial implementation is undertaken at the site.

The State's letter should also designate an SPO for the project.

An MOU, on the other hand, is a joint agreement defining the project to be undertaken and both EPA and State responsibilities for performing that work. It is a less elaborate form of agreement than an SSC, and will normally cover a remedial investigation/feasibility study and a remedial design. The MOU may be used when remedial planning activities require more formal arrangements than can be made using a State letter of request.

A State may choose to negotiate an MOU which covers remedial planning activities at more than one site. However, an MOU may not be used for remedial implementation projects. For these, a formal Superfund State Contract (SSC) must be used to obtain the State contribution and any necessary assurances (see Chapter V of this document). An SCC must also be used if the State chooses to provide advance match funds during remedial planning.

A completed MOU will usually consist of the memorandum itself, a SOW, a Community Relations Plan (CRP), and intergovernmental review comments. However, contents may vary depending upon the needs of the site and the requirements of EPA and State officials. Sample articles which may be suitable for use in a MOU can be found in Appendix H.

Because of the relative complexity of an MOU, this chapter provides detailed guidance on the development of this type of remedial planning agreement. The State and EPA may, however, utilize the letter of request if it is mutually found to be more appropriate for a particular project. This chapter also discusses the concept of management assistance Cooperative Agreements, which States may use to cover costs they incur in performing management and oversight tasks associated with EPA-lead remedial projects (see Section IV.D, below).

Major steps in the development of an MOU are displayed in Exhibit IV-1, on the following page; also shown is the development of a management assistance Cooperative Agreement. As can be seen in the exhibit, primary responsibility for developing the MOU rests with the RSPO. In doing so, the RSPO should work closely with the SPO, involving other State and Regional personnel, especially the Office of Regional Counsel and other enforcement staff as appropriate. Additional support is available to the RSPO from the EPA Zone Manager, whom the RSPO should regularly inform of progress while developing the MOU.

## EXHIBIT IV-1
## DEVELOPMENT OF MEMORANDA OF UNDERSTANDING

| ACTIVITY | | RESPONSIBILITIES | WORK PRODUCTS |
|---|---|---|---|
| 1. Development of the MOU package (includes: the scope of work, documentation of terms and responsibilities, submission of other documents)*/ | SPO: | . Acts as chief point of contact for State in developing MOU<br>. Negotiates terms of MOU with RSPO<br>. Reviews terms of MOU during development<br>. Reviews Community Relations Plan | . Completed set of articles comprising the body of the MOU<br>. Scope of work<br>. Community Relations Plan<br>. Integovernmental review comments |
| | RSPO: | . Negotiates terms of MOU with RSPO<br>. Develops MOU<br>. Obtains Regional Counsel and other necessary Regional concurrences<br>. Submits Community Relations Plan<br>. Includes intergovernmental review comments | |
| | ZONE MGR: | . Supports RSPO, as requested | |
| 2. Development of the management assistance Cooperative Agreement | SPO: | . Develops management assistance Cooperative Agreement application<br>. Develops management assistance Cooperative Agreement provisions<br>. Submits Procurement System Certification Form, Certification Letter, and other package components, as applicable | . Completed management assistance Cooperative Agreement application (for appropriate contents, see Exhibit III-2) |
| | RSPO: | . Provides consultation and technical assistance, as requested | |
| | ZONE MGR: | . Supports RSPO, as requested | |

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*/This activity is comprised of three distinct steps which are addressed separately in the text. They have been combined in this exhibit in an effort to simplify presentation of responsibilities.

## A. SCOPE OF WORK FOR REMEDIAL PLANNING

A key purpose of the MOU is to document agreement between EPA and the State on the project in question. This occurs through mutual agreement on the scope of work for the project. The scope of work provides a general outline of the major tasks to be performed during the remedial planning project and the project's objectives. It differs from a statement of work (SOW) in that a SOW contains more detailed information on the project's subactivities, tasks, and subtasks, usually identifying a schedule for their completion, their anticipated outputs, and tentative cost estimates. A scope of work should be attached to the MOU and incorporated into the MOU by reference; the detailed SOW will be developed as the first task to be completed during the project.

The scope of work for an EPA-lead remedial investigation/feasibility study project may be taken from the RAMP, if one has been developed for the site, may be developed as a separate task order to the REM/FIT contractor, or may be prepared by EPA staff. If remedial design is later incorporated into the MOU, a detailed SOW must be added to document the additional tasks and subtasks required to complete that subactivity. This can be based on the conceptual design requirements contained in the completed feasibility study.

## B. DOCUMENTATION OF TERMS AND RESPONSIBILITIES

The MOU may also document EPA and State responsibilities and contain general terms governing the agreement. In many cases, the sample SSC articles found in Appendix H can be used directly or modified for this purpose. However, several of the terms required in an SSC are not appropriate for an MOU. This section describes the most common responsibilities and terms reflected in MOUs; additional ones may be used as the situation warrants.

### B.1 EPA Responsibilities

In addition to those detailed in the SOW, EPA has other responsibilities that may be addressed in an MOU. These include:

- Designation of an RSPO - EPA is responsible for designating a RSPO who will manage activities at the site. Limitations and prerogatives of the RSPO for effecting minor agreement changes should be discussed with the State and included in the MOU

- Communication with the State - Communication will usually be achieved through regular status reports provided by the RSPO to the SPO

- Community Relations Plan - EPA is responsible for implementing the CRP; the State may participate in the community relations program and provide support to EPA, as specified in the CRP

- Site Safety Plan - EPA is responsible for ensuring that a safety plan will be prepared prior to initiation of any on-site work and that it will be implemented during the project.

Other EPA responsibilities, as appropriate for the specific site, may also be discussed and documented in the MOU.

### B.2 State Responsibilities

State responsibilities that may be addressed in an MOU, in addition to those identified in the SOW, include the following:

- Designation of an SPO - The State is responsible for identifying an SPO to monitor site activities. Limitations and prerogatives of the SPO for effecting minor project changes should also be included in the MOU

- Site access and permits - The State is responsible, to the extent of its statutory authority, for securing site access and obtaining, or assisting EPA in obtaining, any permits necessary for remedial activities at the site, should EPA request it to do so

- Assistance in obtaining site data - This assistance includes carrying out necessary coordination with State and local agencies and using the State's authority to obtain available information

- Community Relations Plan - The State is responsible for assisting EPA in implementing the CRP, as specified in the Plan.

Other State responsibilities, as appropriate to the specific conditions at the site, may also be documented in the MOU.

### B.3 General Terms

Finally, paragraphs that define the general terms governing the MOU may be developed. Topics that might be addressed include:

- Emergency response actions - A paragraph specifying that remedial activities defined in the SOW may be suspended or modified if an emergency response is necessary at the site
- Third parties - A paragraph excluding third-party benefits under the MOU; it should also exempt EPA and the State, to the extent possible, from third-party liability
- Coordination of enforcement and cost recovery - One or more paragraphs providing that these activities will be coordinated through Regional and State attorneys and address relevant enforcement subjects
- Responsible parties - A statement that performance of remedial activity at the site by a responsible party could change the scope of the MOU
- Modifications to the agreement - A paragraph identifying that there may be a need to alter the MOU to reflect changes in the agreement between EPA and the State
- Termination of the agreement - A provision that the MOU can be terminated upon agreement by both parties.

## C. OTHER SUBMISSIONS

The MOU will usually include two additional attachments:

- Community Relations Plan
- Intergovernmental review comments.

These are discussed in detail below.

### C.1 Community Relations Plan (CRP)

The CRP is a management and planning tool outlining the specific community relations activities to be undertaken during the course of the remedial response. It is designed to provide for two-way communication between the affected community and the agencies responsible for conducting the response action.

The CRP for EPA-lead activities must be included with the MOU (if used) or must be developed prior to the initiation of remedial planning subactivities, whichever occurs first. For more details on the contents of CRPs, see Section III.D.1 of this document and also refer to Community Relations in Superfund: A Handbook, (interim version), OSWER, September 1983.

### C.2 Intergovernmental Review Comments

The final component of the MOU package is the intergovernmental review comments. If the State has developed a review process that includes Superfund MOUs, the RSPO should include in the agreement package any review comments and EPA's response to them. EPA will execute an MOU only after receipt of the review comments if the program is covered by the process, unless the State process has no comments. If the MOU has not been subjected to formal review but affected local officials have responded to direct notification, the RSPO may include these comments in the MOU package, as appropriate.

## D. MANAGEMENT ASSISTANCE COOPERATIVE AGREEMENTS

States have in the past been solely responsible for costs they have incurred during EPA-lead remedial projects. As a result, some States have found that resource and staffing constraints have made it difficult for them to perform tasks assigned under EPA-lead remedial agreements. In response to this problem, EPA has developed management assistance Cooperative Agreements.

Management assistance Cooperative Agreements are designed to cover State costs for Federal-lead projects. These Agreements may include remedial planning and/or remedial implementation activities at one or more such sites within a State's borders; when costs are to be incurred at more than one site, the Agreement must specify which sites are covered.

State costs through remedial planning to be included in the management assistance Cooperative Agreement may not exceed 3 percent of the estimated total project costs for all sites covered (e.g., if the management assistance Cooperative Agreement is to be used during an EPA-lead remedial planning project totalling $1,500,000 at three sites, the amount of the Agreement should not exceed $45,000). Specific remedial planning activities which can be undertaken using agreements of this type include the following:

- Review of work products (such as preliminary planning outputs, project SOWs, draft remedial investigation reports, and draft feasibility study reports)
- Visits to the remedial site by State personnel
- Participation in commmunity relations activities.

The State may choose to negotiate a single Cooperative Agreement to cover both State-lead projects and State costs incurred under EPA-lead projects. When the State elects to do this, its Agreement must meet both the requirements listed above and those outlined in Chapter III of this document.

The scope and contents of individual management assistance Cooperative Agreements will vary, depending upon State and Regional requirements. Preparation, review, and approval procedures should be similar to those for remedial response Cooperative Agreements, described in Chapters III and VI of this document. EPA expects to issue further guidance on management assistance Cooperative Agreements at a later date. In the meantime, more information on this option can be obtained from RSPOs or the appropriate Zone Managers in EPA Headquarters.

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Upon completion of each of the steps identified in this chapter, the RSPO should have an MOU submission package ready for review by the State and EPA Region. Review and approval procedures for MOUs are described in Chapter VI.

## V. DEVELOPMENT OF SUPERFUND STATE CONTRACTS

A Superfund State Contract (SSC) is the type of contractual agreement entered into by EPA and the State when EPA has lead responsibility for remedial implementation. It is not a procurement contract, as defined by the Federal Grant and Cooperative Agreement Act. Rather, the SSC is a joint, legally binding agreement that provides the medium for obtaining any required State cost share and assurances and also documents responsibilities for remedial implementation at a site. An SSC is not needed for remedial planning subactivities, since no cost-sharing or other CERCLA section 104(c)(3) assurances are required. In addition, an SSC may not be used to cover Operation and Maintenance (O&M); the State must take the lead for O&M through use of a Cooperative Agreement (see Chapter III).

In the case of a remedial action at a publicly-owned site, the SSC must also be used to obtain the State's cost-share for remedial planning. Remedial planning at such sites may be covered by either an MOU or State letter of request (see Chapter IV). However, EPA does not require the State to provide its statutory cost share for remedial planning until such time as a remedial action is implemented at the site. Under the remedial implementation SSC, the State is obliged to provide its required cost share for removals, completed remedial planning, and the remedial implementation subactivities to be initiated.

Major steps in the development of an SSC are presented in Exhibit V-1, on the following page. As shown in the exhibit, primary responsibility for developing the draft SSC rests with the RSPO. The RSPO should work closely with the SPO throughout the development of the SSC, involving other State and Regional staff, especially the Office of Regional Counsel and other enforcement personnel, as appropriate. Support is available to the RSPO from the EPA Zone Manager, whom the RSPO should regularly inform of progress while developing the SSC.

A completed SSC will consist of the terms of the agreement between EPA and the State and attachments that include the following elements:

- Statement of work
- Revised Community Relations Plan
- Governor or Attorney General certification letter (if required)
- Intergovernmental review comments.

## EXHIBIT V-1
## DEVELOPMENT OF SUPERFUND STATE CONTRACTS

| ACTIVITY | RESPONSIBILITIES | | WORK PRODUCTS |
|---|---|---|---|
| 1. Development of the SSC package (includes: development of statement of work, development of cost-sharing terms, documentation of other terms and responsibilities, submission of other documents)*/ | SPO: | . Acts as chief point of contact in developing SSC for State<br>. Negotiates terms of SSC with RSPO<br>. Reviews terms of SSC during development<br>. Reviews Revised Community Relations Plan<br>. Submits certification letter (when necessary)<br>. Includes intergovernmental review comments | . Statement of work<br>. Cost-sharing terms and schedule, if required<br>. Completed set of articles comprising the body of the SSC<br>. Revised Community Relations Plan<br>. Letter from Attorney General or Governor (or designee), certifying the authority of the agency to enter into the SSC and, if necessary for completion of the project, to the assurances required by CERCLA section make 104(c)(3) (if the Attorney General has not signed the SSC)<br>. Intergovernmental review comments |
| | RSPO: | . Negotiates terms of SSC with SPO<br>. Develops SSC<br>. Submits Revised Community Relations Plan | |
| | ZONE MGR: | . Supports RSPO, as requested | |

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*/This activity is comprised of four distinct steps which are addressed separately in the text. They have been combined in this exhibit in an effort to simplify the presentation of responsibilities.

This chapter provides guidance on developing each of these SSC components. A sample SSC for remedial implementation at a privately-owned site can be found in Appendix I.

## A. DEVELOPMENT OF THE STATEMENT OF WORK (SOW)

The SOW is the basis for all responsibilities defined in the SSC. It describes the activities, subactivities, and tasks that EPA, through its contractors or through other Federal agencies, will carry out at the site and is used in estimating costs for these activities. It should be attached to the SSC and incorporated into the SSC by reference.

As with other types of remedial response agreements, activities identified in the SSC SOW should be consistent with the remedial response framework of the National Contingency Plan (NCP), section 300.68. The scope of the SOW will usually include only remedial implementation (i.e., remedial actions and IRMs). A SOW for a remedial action, however, will usually be prepared as part of the remedial design.

## B. DEVELOPMENT OF STATE COST-SHARING TERMS

Based on cost estimates derived from work contained in the SOW, the State's cost share should be determined and payment terms negotiated. Terms negotiated between EPA and the State should be included as an article in the SSC. The remainder of this section provides guidance for calculating the State's cost share, negotiating payment terms, and documenting both in the SSC.

### B.1 Calculation of the State's Cost Share

There are three factors that determine the amount of a State's cost-sharing obligation:

- Estimated total project costs as defined by the government estimate contained in the SOW. Remedial action project cost estimates must be adjusted to cover Army Corps of Engineers oversight costs plus various contingencies. The chart in Exhibit V-2, on the following page, can be used to estimate total remedial actions costs; to minimize the need for future amendments, SSCs should be negotiated to cover the total remedial action costs.

## EXHIBIT V-2
## FIGURES FOR USE IN ESTIMATING TOTAL EPA-LEAD REMEDIAL ACTION COSTS

| ITEM | REM. ACTION ESTIMATES LESS THAN $2,000,000 | REM. ACTION ESTIMATES GREATER THAN $2,000,000 |
|---|---|---|
| Supervision and Administration (ACE) On-Site Costs | 8% | 6% |
| Bid Contingency* | 25% | 25% |
| Engineering and Design Support | 1.5% | 1% |
| During Construction Contingency Construction Change-Orders and Claims Contingency | 10% | 8% |
| TOTAL | 44% | 40% |

* Bid contingency is included to allow the Army Corps of Engineers (COE) to award a contract to the low responsive, responsible bidder; the Corps is required to have funds available for 25% more than the estimated cost of a project before it may issue Invitations for Bids. For State-lead projects, EPA maintains a contingency fund under the RAP process which may be used to cover bids in excess of project cost estimates.

- The State's cost-sharing percentage -- either 10 percent of remedial implementation costs or at least 50 percent of all response costs (including removals and remedial planning) -- as required by CERCLA section 104(c)(3)(C).
- The amount of site-specific credit, if any, available to the State under the provisions of section 104(c)(3)(C) of CERCLA (see Section II.F of this document and Appendix C for more details).

Each of these factors should be documented in an SSC article defining State cost-sharing terms.

Calculation of the State's cost-sharing obligation is a two-step process. The first step is to identify the State's total cost share for the site. This is determined by multiplying the total cost of activities included in the SSC SOW which require cost-sharing by the appropriate State cost-sharing percentage. If the site is publicly-owned, the State's share of any removal and remedial planning costs must also be added.

The second step is to calculate the State's total obligation by applying State credit. Available credit, up to 100 percent of the State's cost share, is subtracted from the State's cost share to determine the State's total obligation. (Where there is no credit, the State's total obligation will equal the State's cost share.) This corrected amount represents the total contribution the State must provide to EPA. For examples of this calculation, see Exhibit V-3, on the following page.

### B.2 Negotiation of Payment Terms

If there is insufficient credit to cover its cost-sharing obligation, the State must contribute the difference in cash payments. The State may use either of two alternative methods: lump-sum or installment payments. When the State elects to use the lump-sum payment method, EPA prefers to receive the money within 30 days of execution of the SSC.

When the State uses the installment approach, EPA and the State will negotiate a payment schedule which is documented in the SSC, along with payment amounts. Where possible, the SSC should identify specific payment due dates. EPA prefers one payment to be scheduled within 30 days of SSC execution and one at the completion of site activities; other payments can either be made on a regular

## EXHIBIT V-3
## STATE COST SHARE CALCULATIONS
(for remedial implementation projects)

**Example 1**

Total remedial implementation cost = $550,000
State cost-sharing percentage = 10 percent (privately-owned site)
State credit = none

| | | | | | |
|---|---|---|---|---|---|
| . | Total remedial implementation cost<br>$550,000 | x<br>x | State cost-sharing percentage<br>10 percent | =<br>= | State Cost Share<br>$55,000 |

The State is required to contribute $55,000 in cash or services; EPA will provide the remaining $495,000 for the remedial implementation.

**Example 2**

Total remedial implementation cost = $550,000
State cost-sharing percentage = 10 percent (privately-owned site)
State credit = $35,000

| | | | | | |
|---|---|---|---|---|---|
| . | Total remedial implementation cost<br>$550,000 | x<br>x | State cost-sharing percentage<br>10 percent | =<br>= | State Cost Share<br>$55,000 |
| . | State cost share<br>$55,000 | -<br>- | State credit<br>$35,000 | =<br>= | State Obligation<br>$20,000 |

The State is required to contribute $20,000 in cash; the remainder of the State cost share is met by applying the State credit. EPA will provide $530,000 for the remedial implementation.

**Example 3**

Total remedial implementation cost = $550,000
State cost-sharing percentage = 50 percent (publicly-owned site)
State cost share for remedial planning = $50,000
State credit = $350,000

| | | | | | |
|---|---|---|---|---|---|
| . | Total remedial implementation cost<br>$550,000 | x<br>x | State cost-sharing percentage<br>50 percent | =<br>= | State Cost Share for Remedial Implementation<br>$275,000 |
| . | Remedial planning cost share<br>$50,000 | +<br>+ | Remedial implementation cost share<br>$275,000 | =<br>= | Total State Cost Share<br>$325,000 |
| . | Total State cost share<br>$325,000 | -<br>- | State credit (up to 100 percent of State cost share)<br>$325,000 | =<br>= | State Obligation<br>0 |

EPA funds 100 percent of all project costs under the Superfund State Contract. Of the $350,000 credit, $325,000 has been applied, leaving $25,000 available for future cost-sharing of the site. The State will not be reimbursed for the remaining $25,000.

billing schedule or tied to the completion dates of site activities. Although the schedule is flexible, EPA prefers that the State's payments match EPA disbursements as closely as possible (e.g., 50 percent of the State cost share received by the time 50 percent of project costs have been incurred).

Under both of these payment methods, the SSC should contain a provision for reconciling estimated and actual total project costs and adjusting the State's cost-sharing terms accordingly. Where the State has provided its estimated cost share in a lump sum, EPA will refund any excess payment or will request additional payment if there is a difference between actual and estimated costs. If the State provides its payments in installments, EPA will adjust the payment due at completion of the project, as appropriate, for any difference.

Prior to the May 13, 1983 recision of the 10 percent cost-sharing for remedial planning, States shared in such costs at some privately-owned sites. Under EPA's current legal determination, any cost shares previously paid by the State (allowable State services, statutory credit, or cash) for these activities may be applied to the State's cost-sharing obligation during remedial implementation at the site. Such cost shares may have been included in the SSC under the previous EPA policy. If the State did provide a remedial cost share prior to the May 13 decision, EPA may apply this money toward the State's ultimate cost share during remedial implementation.

## C. DOCUMENTATION OF OTHER TERMS AND RESPONSIBILITIES

The body of the SSC also contains articles that document other EPA and State responsibilities and general terms governing the agreement. Each of these responsibilities and terms should be discussed and incorporated into the SSC as appropriate. Appendix H provides examples of articles usually found in the SSC as well as additional background information. This section briefly describes the responsibilities and terms most commonly defined in a Contract.

### C.1 EPA Responsibilities

In addition to responsibilities described in the project SOW, EPA has other responsibilities that should be addressed in SSC articles. These responsibilities include:

- Designation of an RSPO - EPA is responsible for designating an RSPO who will manage implementation at the site. Limitations and prerogatives of the RSPO for effecting minor SSC changes should be discussed with the State and included in the SSC

- Completion of site activities - EPA will retain this responsibility even though the actual remedial implementation is performed by REM/FIT Zone Contractors or under the direction of another Federal agency; this responsibility should be confirmed in the SSC

- Communication with the State - Communication will usually be achieved through regular status reports that the RSPO will provide to the SPO; EPA is also responsible for seeking State input on any key decision points in the process

- Community Relations Plan - EPA is responsible for implementing the CRP; the State may participate in the community relations program and provide support to EPA as specified in the CRP

- Site Safety Plan - EPA is responsible for ensuring that a safety plan will be prepared prior to the initiation of on-site activities and will be implemented during the project.

Other EPA responsibilities, as appropriate for the specific site, may also be discussed and documented in the SSC.

### C.2 State Responsibilities

State responsibilities that should be discussed in the SSC, in addition to those identified in the SOW, include the following:

- Designation of an SPO - The State is responsible for identifying an SPO who will monitor site activities. Limitations and prerogatives of the SPO for effecting minor project changes should also be included in the SSC

- Assistance in obtaining site data - This assistance includes carrying out necessary coordination with State and local agencies and using the State's authority to obtain available information

- Provision of operation and maintenance (O&M) (if necessary) - CERCLA 104(c)(3)(A) requires the State to assure O&M of the selected remedy. Where this is necessary, the State is responsible for undertaking all future O&M for the life of the project, (the O&M must be covered under a Cooperative Agreement)*

- Provision of off-site facility (if necessary) - CERCLA 104(c)(3)(B) requires the State to assure availability of adequate off-site storage, treatment, or disposal when necessary for completion of the project. To meet this assurance, the State is required to provide an acceptable off-site facility, should EPA request the State to do so**

- Obtaining site access - To the extent of its legal ability, the State is responsible for obtaining site access

- Obtaining necessary permits - The State is responsible for obtaining, or assisting EPA in obtaining, permits necessary for the completion of proposed activities

- Community Relations Plan - The State is responsible for assisting EPA in the implementation of the community relations program as specified in the CRP.

Other State responsibilities, as appropriate to the specific conditions at the site, may also be discussed and documented in the SSC.

### C.3 General Terms

The RSPO, in consultation with the SPO, should develop articles that define the general terms governing the SSC. Specific articles that should be discussed and drafted include the following:

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* Where O&M is necessary for the remedial action chosen, the State must also provide EPA with an O&M plan; Section III.B.2.a of this document defines contents of such a plan.

** Section I.B.3 of this document defines conditions that the facility must meet to be considered adequate.

- Emergency response actions - An article specifying that remedial activities defined in the SOW may be suspended or modified if an emergency response is necessary at the site
- Third parties - An article excluding third-party benefits under the SSC; it also, to the extent possible, exempts EPA and the State from third-party liability
- Coordination of enforcement and cost recovery - One or more articles addressing relevant enforcement and cost recovery subjects and providing for the coordination of these activities through Regional and State attorneys
- Actions by responsible parties - A statement that remedial response activities by a responsible party could reduce the scope of the SSC
- Amendments to the agreement - An article identifying that there may be a need to amend the SSC to reflect changes in the agreement between EPA and the State
- Termination of the Contract - A provision that the SSC can be terminated upon joint agreement by both parties
- Failure to comply with Contract - A provision that if either party fails to comply with the terms of the SSC, the other party may seek to enforce the contract.

## D. OTHER SUBMISSIONS

The SSC will usually include three additional attachments:

- Revised Community Relations Plan
- Certification letter
- Intergovernmental review comments.

These are discussed in detail below.

### D.1 Community Relations Plan (CRP)

The CRP is a management and planning tool outlining the specific community relations activities to be undertaken during the course of the remedial response. It is designed to provide for two-way communication between the affected community and the agencies responsible for conducting the response action.

If Fund-financed remedial planning has been implemented at the site, a CRP has already been developed. This CRP must be revised prior to the implementation of a remedial action at the site. The revised version of the site CRP must be included with the final SSC when it is submitted for EPA approval. For more details on preparing CRPs, refer to Section III.D.1 of this document.

### D.2. Certification Letter

The State should provide, as an appendix to its SSC, a letter certifying that the State official who signs the SSC has the authority to enter into an agreement with EPA and, if necessary for the completion of the project, to make the assurances required by section 104(c)(3) of CERCLA. The certification letter may be from either the State's Governor or Attorney General.

Such a letter need not be site-specific; the State may prepare one letter applying to all of its NPL sites and submit a copy with each SSC. Examples of this certification letter are provided in Appendix J. More detailed information concerning assumption of O&M will be contained in the State's O&M plan, the requirements of which are outlined in Section III.B.2 of this document.

Certification of authority is not required if the State Attorney General signs the SSC.

### D.3 Intergovernmental Review Comments

The final component of the SSC package is the intergovernmental review comments. If the State has developed a review process that includes SSCs, the RSPO should include in the SSC package any review comments and EPA's response to them. EPA will execute an SSC only after receipt of the review comments if the program is covered by the process, unless the State process has no comments. If the SSC has not been subjected to formal review but affected local officials have responded to direct notification, the RSPO may include these comments in the SSC package, as appropriate.

* * * * *

Upon completing each of the steps outlined in this chapter, the RSPO should have an SSC submission package ready for review by the State and the EPA Region. Review and approval procedures are described in the next chapter.

# VI. EXECUTION OF REMEDIAL AGREEMENTS

The review and approval process is similar for Cooperative Agreements, MOUs, and SSCs,* and usually consists of three major steps:

- Review of the draft agreement
- Final Regional review
- Approval and execution.

The three sections in this chapter describe these steps and the respective responsibilities of State and EPA officials respective responsibilities. A summary of these responsibilities is provided in Exhibit VI-1, on the following page. Regions may, at their discretion, institute less elaborate procedures for MOU approval than those described in this chapter.

Exhibit VI-2, following Exhibit VI-1, summarizes key events within each of the steps listed above. As can be seen from Exhibit VI-2, the execution process is similar for Cooperative Agreements, MOUs, and SSCs. Because of these similarities, the execution processes for the three types of agreements are, for the most part, discussed simultaneously in this chapter. An exception is made for the first step in the process -- review of the draft agreement -- where separate discussions are included for Cooperative Agreements and EPA-lead submissions.

## A. REVIEW OF THE DRAFT AGREEMENT

As the first step in the execution process, a completed draft agreement should undergo an initial review by officials in the State and in the EPA Regional program office to ensure that it is complete, technically sound, and consistent with State and Federal statutes, regulations, and policies. This draft review provides an opportunity to identify and resolve any major issues prior to the formal submission of the agreement for approval.

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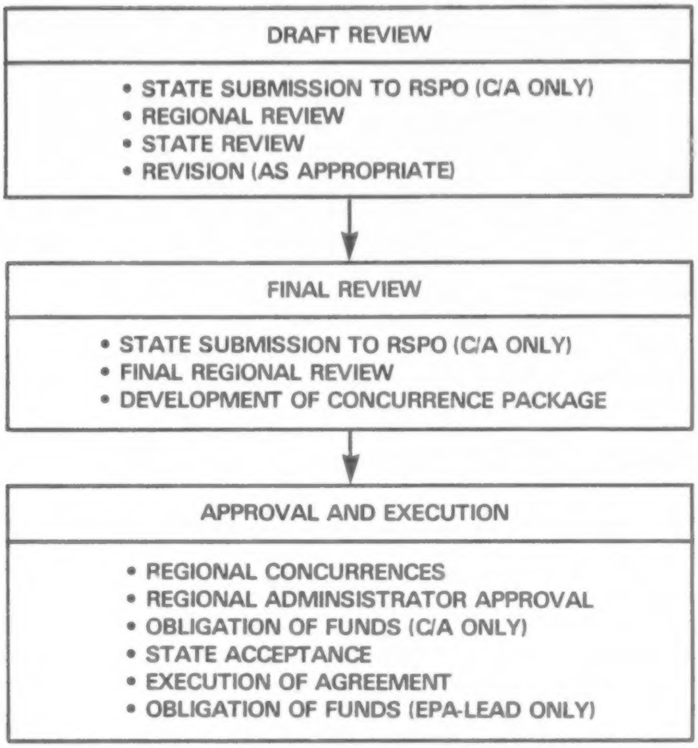
* State letters requesting initiation of EPA-lead remedial planning are not required to undergo the process described in this chapter. Necessary review, concurrences, and approvals of these projects should have been secured upon their inclusion in the Remedial Accomplishments Plan (RAP).

## EXHIBIT VI-1
## EXECUTION OF REMEDIAL AGREEMENTS

| ACTIVITY | | RESPONSIBILITIES | WORK PRODUCTS | |
|---|---|---|---|---|
| | | | STATE-LEAD | EPA-LEAD |
| 1. Draft Review | SPO: | . Coordinates State review<br>. Develops draft application package and submits to RSPO (C/A only)<br>. Renegotiates MOU or SSC provisions, as necessary (EPA-lead only) | . Draft Cooperative Agreement application package | . Draft MOU or SSC |
| | RSPO: | . Coordinates Regional review<br>. Assists SPO with revisions, as necessary (C/A only)<br>. Develops draft MOU or SSC (EPA-lead only)<br>. Renegotiates provisions, as necessary | | |
| | ZONE MGR: | . Provides liaison between EPA Region and Headquarters<br>. Assists RSPO, as necessary | | |
| 2. Final Regional Review and Preparation of Concurrence Package | SPO: | . Acts as chief point of communication for State<br>. Obtains required State concurrences | . Concurrence Package:<br>- Cooperative Agreement application package<br>- Decision Memo<br>- Grant Funding Order (EPA Form 5700-14)<br>- Commitment Notice (EPA Form 2550-9)<br>- Draft press release<br>- Congressional notification plan | . Concurrence Package:<br>- MOU or SSC<br>- Decision Memo<br>- Draft press release<br>- Congressional notification plan |
| | RSPO: | . Coordinates Regional review process<br>. Prepares concurrence package | | |
| | ZONE MGR: | . Provides liaison between EPA Region and Headquarters<br>. Assists RSPO, as necessary | | |
| 3. Approval and Execution of the Agreement | SPO: | . Acts as chief point of communication for State<br>. Discusses required changes with RSPO, as necessary | . Offer of Award (Form 5700-20A) | . Executed MOU or SSC |
| | RSPO: | . Reviews any revisions made to agreement<br>. Communicates all EPA comments to SPO<br>. Discusses required changes with SPO, as necessary | | |
| | ZONE MGR: | . Provides liaison between EPA Region and Headquarters<br>. Assists RSPO, as necessary | | |

EXHIBIT VI-2
AGREEMENT REVIEW AND APPROVAL PROCESS


DRAFT REVIEW
• STATE SUBMISSION TO RSPO (C/A ONLY)
• REGIONAL REVIEW
• STATE REVIEW
• REVISION (AS APPROPRIATE)
FINAL REVIEW
• STATE SUBMISSION TO RSPO (C/A ONLY)
• FINAL REGIONAL REVIEW
• DEVELOPMENT OF CONCURRENCE PACKAGE
APPROVAL AND EXECUTION
• REGIONAL CONCURRENCES
• REGIONAL ADMINSISTRATOR APPROVAL
• OBLIGATION OF FUNDS (C/A ONLY)
• STATE ACCEPTANCE
• EXECUTION OF AGREEMENT
• OBLIGATION OF FUNDS (EPA-LEAD ONLY)

Because procedures differ slightly at this initial stage, reviews of the draft Cooperative Agreement application package and the draft EPA-lead submission are discussed separately below.

### A.1 Review of the Draft Cooperative Agreement Application Package

Once the SPO and the RSPO agree upon the content of the draft Cooperative Agreement application package, it should be reviewed concurrently by staff in the State and EPA Region. The SPO should initiate this review by distributing copies of the draft to State officials and to the RSPO. In turn, the RSPO should distribute the draft application package to appropriate Regional officials. Participants in the State and Regional reviews will vary, depending on the requirements of the site, but should at least include the Office of Regional Counsel and enforcement and technical staff members. Based on EPA and State comments, the SPO and RSPO should jointly resolve issues and revise the draft Cooperative Agreement application package, as appropriate, to produce a final application.

### A.2 Review of the Draft EPA-Lead Submission

Unlike the Cooperative Agreement, where the SPO is responsible for initiating the review and approval process, initiation of this process for an MOU or SSC is the responsibility of the RSPO. Once the RSPO and the SPO have developed a draft submission, the RSPO should distribute copies to Regional staff, thus initiating EPA Regional draft review, and to the SPO. Regional review should involve participation by technical and enforcement staff members, as well as representatives from the Office of Regional Counsel. The SPO should distribute the draft submission to State officials for review. Comments should be incorporated into the final document as appropriate.

## B. FINAL REGIONAL REVIEW AND PREPARATION OF THE CONCURRENCE PACKAGE

The second step in the review process is the final Regional review of the Cooperative Agreement application package or EPA-lead submission, and preparation of a concurrence package. Final Regional review should ensure that all previous comments have been appropriately addressed and that any issues which could delay approval are resolved. This step is similar for both Cooperative Agreement application packages and EPA-lead submissions.

The RSPO is responsible for coordinating final Regional review and obtaining necessary concurrences. As in the draft review, participants may vary, but should at least include technical staff members and representatives from the Office of Regional Counsel.

Once the final review has been completed and necessary concurrences obtained, the RSPO should prepare a concurrence package for the agreement. A concurrence package for Cooperative Agreements and EPA-lead submissions should include:

- A Decision Memorandum recommending approval of the agreement and highlighting potential issues associated with the project (see Exhibit VI-3 on the following page which, for the benefit of Regional staff, outlines the suggested format and contents of a Decision Memorandum); this will be issued from the Recommending Official through the Regional Administrator (RA)*
- The Cooperative Agreement application package or EPA-lead submission (including intergovernmental review comments)
- A draft press release for announcing execution of the agreement
- A Congressional notification plan for informing concerned Federal and State officials of the agreement.

Concurrence packages for Cooperative Agreements shall also contain a Grant Funding Order (EPA Form 5700-14), with special conditions attached if the application has not adequately addressed all EPA requirements, and a Commitment Notice (EPA Form 2550-9).

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* The approval process for a Cooperative Agreement involves a Recommending Official, a Decision Official, and an Award Official. Although the Superfund Division Director (DD) functions as both the Recommending Official and the Decision Official, it is possible for the DD to delegate recommending authority to another official, usually the Regional Superfund Coordinator. When the DD has delegated this authority, the Decision Memo will be from the Recommending Official to the RA (Award Official) through the DD (Decision Official). When the delegation has not been made, and for all EPA-lead submissions, the Decision Memo will be from the DD to the RA.

## EXHIBIT VI-3
## SUGGESTED FORMAT FOR THE DECISION MEMORANDUM

| SUBJECT | CONTENT |
|---|---|
| Objective | Brief summary of the purpose of the project and how the proposed remedial activities satisfy it. |
| Relationship of the Project to the Program's Mission | Explanation of how the proposed project fulfills the CERCLA objectives of mitigating or minimizing potential damage to public health, welfare, or the environment. |
| Explanation of Any Apparent Duplication of Effort | Statement that the proposed project will not duplicate any previous site activities and explanation of how it will be coordinated with any past remedial and removal activities at the site. |
| Enforcement | Short statement of past and prospective enforcement actions, including concurrence from the Office of Regional Counsel that funding the project is appropriate in light of the status of enforcement activity. |
| Community Relations | Statement that describes the purpose and scope of the community relations program for the site. |
| Recommendations | Recommendations that the project be approved. For Cooperative Agreement applications, this should also include determination of the State's ability to manage the project. |
| Reviews | Outline of the State and Regional review mechanisms to ensure that conduct of the project will conform to program requirements. |
| Project Officer | Designation of the RSPO, including an address and telephone number. |
| Deviation Request | If the State has made such a request at the time of application submission, section containing necessary Regional concurrences on and recommendations for RA concurrence on the request. |

## C. APPROVAL AND EXECUTION

The third and final step in the review and approval process for Cooperative Agreements and EPA-lead submissions is their approval and execution. Because of the similarities in carrying out this step for both types of agreements, they are discussed together in this section. Particular attention is given to procedures for review, concurrence, and execution.

The RSPO should distribute the completed concurrence package to the Regional offices that participated in the draft review. After necessary concurrences have been obtained, the package should be submitted to the RA for signature. Procedures followed after the RA's receipt of the package differ to some extent, depending on the type of agreement in question.

The RA, upon signature of the EPA-lead agreement, executes the agreement for EPA. Thereafter, two signed copies are sent to the State for execution. To accomplish this, an authorized State official must sign both copies of the agreement and return one to the RSPO for retention in EPA files.

For a Cooperative Agreement, however, the process is somewhat different. If the package is acceptable to the RA, it is sent to the Regional grants office for preparation of the offer of award (EPA Form 5700-20A). This is returned to the RA -- the Award Official -- for signature. Two signed copies of the Cooperative Agreement, accompanied by a cover letter making the offer of award, are then sent to the State for acceptance. Upon signature of the offer of award, the State should return one copy to the Region to complete the execution process; the second copy is for retention in the State's files.

Where a Cooperative Agreement has been executed, remedial activities at the site may commence immediately because the Cooperative Agreement obligates necessary funds. Execution of an EPA-lead agreement however is only one step in funding Federal-lead remedial activities. Money for activities under an EPA-lead agreement must be obligated either in work assignment packages under one of EPA's REM/FIT contracts or through an Interagency Agreement (IAG) with the Army Corps of Engineers or other Federal agency. The REM/FIT contract manuals, Management Plan and Operating Procedures: Remedial Planning/Field Investigation Team Zone Contracts and REM/FIT Zone Contract Management Procedures: An Illustrated Guide contain details and procedures necessary for preparing such documents. These submissions should be developed concurrently with the preparation, review, and approval of the EPA-lead agreement to avoid any delay in obligation of the funds.

* * * * *

This chapter has provided guidance for approving and executing Cooperative Agreements and those EPA-lead agreements which require review, concurrence, and approval. Following execution, all remedial response agreements must be implemented. Procedures established for the administration of Cooperative Agreements, SSCs, and other EPA-lead agreements are the subject of Chapter VII.

# VII. ADMINISTRATION OF REMEDIAL AGREEMENTS

A number of administrative activities are required to ensure that an executed remedial response agreement is implemented successfully. These activities include:

- Monitoring financial commitments made in the agreement, if any
- Monitoring technical commitments made in the agreement
- Coordinating terms of the EPA-lead agreements with performance agreements entered into with the REM/FIT contractor or the U.S. Army Corps of Engineers
- Maintaining adequate documentation of site remedial response
- Documenting the completion of a remedial action.

The above activities and responsibilities for completing them are discussed in this chapter. They are also summarized in Exhibit VII-1, on the following page.

Discussion in this chapter focuses on responsibilities of EPA staff. State roles in carrying out similar activities will depend upon administrative systems unique to each State. In addition, this chapter covers only those administrative activities necessary to manage remedial response agreements. Similar procedures for administering task orders under the REM/FIT Zone Contracts or agreements with the Corps of Engineers are not discussed below but can be found in REM/FIT Zone Contract Management Procedures: An Illustrated Guide, HSCD, April 1983.

## A. MONITORING FINANCIAL COMMITMENTS

RSPOs and Zone Managers are responsible for ensuring that the State carries out the financial commitments made in its Cooperative Agreement or SSC. Two types of financial commitments are discussed below, along with the RSPOs' and Zone Managers' oversight roles and responsibilities.

EXHIBIT VII-1
ADMINISTRATION OF REMEDIAL AGREEMENTS

| ACTIVITY | RESPONSIBILITIES<br>STATE-LEAD | | EPA-LEAD | | ADDITIONAL GUIDANCE |
|---|---|---|---|---|---|
| 1. Monitoring Financial Commitments | SPO: | . Coordinates with RSPO to transfer funds to new activity (if necessary) | | | . Letter of Credit Users Manual, EPA Division of Financial Management<br>. Guidance, Appendix N |
| | RSPO: | . Reviews State drawdown activity<br>. Coordinates State transfer of funds to different activity (if necessary)<br>. Notifies OERR-FCC of changes in accounts<br>. Resolves problems with State | RSPO: | . Follows up and resolves delinquent payments (SSC only) | |
| | ZONE MGR: | . Monitors State expenditures<br>. Supports RSPO problem resolution efforts | ZONE MGR: | . Provides information on payment schedule to OERR-FMC (SSC only)<br>. Supports RSPO problem resolution efforts (SSC only) | |
| 2. Monitoring Technical Commitments | SPO: | . Coordinates with RSPO as necessary | | | |
| | RSPO: | . Initiates and maintains site data in PTS<br>. Monitors technical activities at site<br>. Tracks State CERCLA section 104(c)(3) assurances<br>. Monitors compliance with special conditions<br>. Resolves problems with State<br>. Works with Regional Superfund Community Relations Coordinator (RSCRC) in monitoring community relations activities | RSPO: | . Initiates new activities and updates PTS information, as appropriate<br>. Manages technical activities at site<br>. Tracks State CERCLA section 104(c)(3) assurances (SSC only)<br>. Resolves problems with State<br>. Works with RSCRC in monitoring community relations activities | . Project Tracking System: Procedures Manual/Users Guide, OERR, August 1982.<br>. Community Relations in Superfund: A Handbook, (interim version), OERR, September 1983 |
| | ZONE MGR: | . Monitors site activities<br>. Supports RSPO problem resolution efforts | ZONE MGR: | . Monitors site activities<br>. Supports RSPO problem resolution efforts | |
| 3. Coordinating the MOU or SSC with Performance Agreements | | | RSPO: | . Ensures consistency between SOW and EPA-lead agreement terms<br>. Monitors remedial progress for impact on State cost share or payments (SSC only) | . Management Plan and Operating Procedures: Remedial Planning/Field Investigation Team Zone Contracts, HSCD, October 20, 1982<br>. REM/FIT Zone Contract Management Procedures: An Illustrated Guide, HSCD, April 1983 |
| | | | ZONE MGR: | . Monitors MOUs, SSCs, REM/FIT work orders, and IAGs | |
| 4. Documenting Remedial Activity | SPO: | . Maintains site file | | | . Cost Recovery Actions Under CERCLA, OEC and OSWER, August 26, 1983 |
| | RSPO: | . Maintains site file<br>. Ensures necessary information maintained in Regional grants office<br>. Forwards necessary documents to Zone Manager | RSPO: | . Maintains site file<br>. Forwards necessary documents to Zone Manager | |

VII-1a

### A.1 State Drawdowns Under a Cooperative Agreement

The preferred method for transferring funds to a State under a Cooperative Agreement is through a Letter of Credit. Using this method, EPA establishes at a Federal Reserve bank of the State's choosing a credit account for remedial planning and/or one for remedial implementation, if applicable, for each signed Agreement. The State then "draws down" funds from the appropriate credit account to cover EPA's share of immediate cash needs for each activity approved in the Cooperative Agreement. When the Cooperative Agreement is site-specific, the State must draw down funds by the appropriate activity code. When the Agreement covers more than one site, the State should be careful to make drawdowns using the correct site and activity codes. In either case, State drawdowns should reflect provision of the State's cost share on a current basis (i.e., the State should not draw down all of EPA's share before providing its share of costs). Total drawdowns may not exceed the amount obligated for each activity and site in the Cooperative Agreement.

The RSPO should review State drawdowns on a monthly basis, using drawdown information available from the Regional financial management office. Key documents for this review include the Financial Management System (FMS) Outlay Report and the State's quarterly progress report, required under the terms of each Cooperative Agreement. In the review, the RSPO should first determine that State drawdowns correspond to technical progress at the site and that they are only large enough to cover immediate (usually one month) cash needs. The RSPO should also determine whether the State is following the account structure established in the Cooperative Agreement. Under the terms of the Cooperative Agreement, the State may draw down funds from an account only for work performed under activities funded by that account (for example, only remedial planning work may be paid with funds drawn down from the corresponding account established for remedial planning). The account from which drawdowns were made, identified in the FMS Outlay Report or State quarterly report, must match the activities being undertaken.

Upon completion of remedial planning at a site, any funds remaining in the site remedial planning account may be used to fund an approved remedial implementation project or may be used for activities at another site covered by the same Cooperative Agreement. Such funds, however, must be officially transferred to the appropriate account. To effect this transfer, the State should submit a written request to the RSPO (see Appendix N for details). Transfers also require that the RSPO coordinate with OERR's FCC. If the FCC authorizes the transfer, the RSPO will request that the Cooperative Agreement be formally amended to move the funds to the designated account (see Chapter VIII of this document). Funds remaining in a credit account at the completion of the corresponding activity will be deobligated by EPA and returned to the Fund if the State does not submit a transfer request or if the State's request is denied.

Zone Managers are responsible for monitoring the rate of State expenditures against the percentage of tasks completed for all sites in their individual areas of responsibility. Necessary information can be obtained from the Project Tracking System (PTS) (discussed in greater detail in Section VII.B below). For more information on drawdown procedures, see Appendix N and EPA's Letter of Credit Users Manual, published by the Financial Management Division (FMD).

### A.2 State Payment of Cost Share Under a Superfund State Contract

Unlike a Cooperative Agreement, an SSC does not provide funding to the State. Instead, to cover its share of remedial costs under an SSC, the State may be required to provide cash payments to EPA. If cash is to be provided, the RSPO and Zone Manager should ensure that FMD receives information necessary to track accounts receivable and delinquent payments.

Following execution of the SSC, the Zone Manager should forward a copy of the executed SSC, containing a payment schedule, to FMD to establish the account(s) receivable. FMD will automatically send invoices to the State before the due dates indicated in the payment schedule. If the State is late in making payment, FMD will provide the RSPO with a delinquency report and will forward a copy to the Zone Manager. The RSPO is responsible for contacting the State to resolve any problems; those that cannot be resolved by the RSPO should be referred to the Zone Manager.

## B. MONITORING TECHNICAL COMMITMENTS

In addition to financial commitments, EPA must also monitor technical commitments concerning site activities as well as State assurances and special conditions in the remedial response agreement. These activities and responsibilities are discussed below.

## B.1 Monitoring Site Activities

The RSPO should provide an on-going review of technical progress at remedial sites to ensure that the State carries out commitments detailed in the SOW for the remedial response agreement. The level of review required is dependent upon whether the State or EPA has lead management responsibility for the project. As with financial commitments, Zone Managers are responsible for monitoring the progress of remedial response at sites within their geographical areas and for addressing problems that cannot be resolved between the RSPO and the State.

PTS is one tool used by EPA to track the conduct of work at remedial response sites. The system uses information from the detailed work plan in the Cooperative Agreement and from the REM/FIT contractor task order work plan (based on the SOW in the EPA-lead agreement) to chart estimated start and completion dates. The RSPO should provide information from the work plan to the PTS system following execution of the Cooperative Agreement or EPA-lead remedial agreement.

For additional detailed information on responsibilities and for descriptions of input forms and reports available through PTS, see Project Tracking System: Procedures Manual/Users Guide, OERR, August 1982.

The RSPO should also review progress through other methods to supplement information available from PTS. Some other information sources include site inspections, informal telephone calls (where appropriate), and, for State-lead activities, review of information included in the State's quarterly report.

## B.2 Monitoring State Assurances and Compliance with Special Conditions

The RSPO is also responsible for monitoring State implementation of CERCLA section 104(c)(3), assurances and compliance with Cooperative Agreement special conditions. In addition to any financial commitments necessary for its cost-sharing assurance (see Section I.B.3 of this document), a State may be required to carry out specific actions to implement its off-site facility and O&M assurances; these will be specified in the Cooperative Agreement or SSC. Cooperative Agreement special conditions may also identify specific actions, such as the provision of site safety plans, to which the State has committed itself.

To ensure that such commitments are carried out, the RSPO should track and review specific dates on which State actions are to be taken, if these are available. For State-lead activities, the RSPO may use the State's quarterly report to track these dates.

## C. COORDINATING EPA-LEAD REMEDIAL AGREEMENTS WITH PERFORMANCE AGREEMENTS

After an EPA-lead remedial agreement is executed, EPA initiates remedial activities by entering into an agreement with its REM/FIT Zone Contractor or with other Federal agencies, such as the U.S. Army Corps of Engineers (COE). It is important that the terms of such performance agreements be consistent with those of the SOW for the remedial agreement reached with the State.

The RSPO is responsible for ensuring that both types of agreements are consistent during their initial development. Any SOW changes negotiated between EPA and the State during development of an EPA-lead agreement must be consistent with the SOW in the performance agreement signed with the contractor or another agency. In the same manner, any project changes made in performance agreements with the Zone Contractor or the agency must be negotiated with the State and reflected in the remedial response agreement. Since State payment terms under the SSC may be dependent upon the SOW, the RSPO should also ensure that these terms are consistent with time and cost estimates resulting from any changes made to the SOW.

It is also important to ensure that there is coordination between the agreements during conduct of the remedial response. Any modifications to EPA's performance agreements with its Zone Contractor or other agency that are inconsistent with the terms of the EPA-lead remedial response agreement must be reviewed by the State and reflected in the remedial agreement. The Zone Manager is responsible for ensuring that any necessary changes are made.

In addition, the RSPO should monitor financial and technical progress at the site to determine whether they will affect any State payment terms identified in the SSC. Changes may be required at sites where progress is significantly delayed or where actual costs are significantly different from estimated costs. The RSPO should discuss differences in progress with the SPO and where necessary, adjust payment terms by amending the SSC.

## D. DOCUMENTING REMEDIAL ACTIVITY

Another administrative responsibility for EPA staff is the documentation of site activities through development and maintenance of records and files. The State is also responsible for maintaining files for State-lead remedial response activities; therefore, State files are also discussed below. With the exception of certain policy, deliberative, and enforcement documents which may be held confidential, EPA and State files will be available to the public. For additional details on record maintenance in the Superfund program, see "Suggested Regional File Structure, Superfund Priority Sites and Priority Site Candidates," OSWER, May 1982, and Appendix E of Cost Recovery Actions Under CERCLA, OEC and OSWER, August 26, 1983.

### D.1 Regional Files

Site files for documenting all activities carried out at each site should be developed and maintained in Regional offices. Information in these files is critical to EPA's enforcement and cost recovery actions.

In general, Regional files should document and support all actions taken at the site. Documentation should be sufficient to identify the source(s) and circumstances of site problems and potentially responsible parties, provide an accurate account of Federal costs incurred, and demonstrate actual and potential impacts to public health and welfare or to the environment. Files should include the following documents:

- A signed copy of the final remedial response agreement and concurrences from reviewing offices
- A signed copy of the Decision Memorandum
- A copy of the final draft agreement (if different from the approved version of that agreement).

Other communications, memoranda, and relevant documents may also be included in the file, as appropriate.

### D.2 EPA Headquarters Files

Zone Managers are responsible for maintaining OERR program files that are adequate to monitor progress under remedial response agreements. Zone Managers in both the State and Regional Coordination Branch (SRCB) and in the Remedial Action Branch (RAB) are responsible for keeping records and documents pertaining to EPA and State-lead agreements, including many of the documents in the site files maintained in the Regions. RSPOs should provide copies of necessary documents, such as those items identified above, State letters of request, reports, and letters concerning the agreement, to the Zone Managers for retention in their files.

In addition, Zone Managers are responsible for maintaining OERR records related to obligations under EPA-lead agreements. Contents of these files should be similar to the Regional site files. Zone Managers should also provide necessary information to the following Divisions:

- Grants Administration Division, for Interagency Agreements (IAGs)
- Procurement and Contracts Management Division, for REM/FIT contracts.

The above offices are those responsible for making obligations for these agreements and will maintain the official files.

### D.3 State Files

In accordance with EPA's assistance regulation, a State entering into a Cooperative Agreement must maintain a file containing all relevant documents and communications pertaining to the development and implementation of that Agreement. These records should include such site-specific documentation as ledgers, purchasing and contracting files, receipts, vouchers, travel authorizations, methods of equipment usage, and depreciation. Records must be maintained intact for three years after the submission of the final Financial Status Report (SF-269) or until any litigation, claim, appeal, or audit begun during that three-year period has been settled. Contents of State files for EPA-lead projects are at the discretion of the State.

## E. DOCUMENTING COMPLETION OF REMEDIAL IMPLEMENTATION

[RESERVED]

* * * * *

The activities and responsibilities described in this chapter will continue throughout the agreement period; remedial agreements will remain in effect until the end of EPA's participation in O&M costs. At any time during the project, however, an occasion may arise when it is necessary to adjust the terms of an executed agreement. Procedures for making these adjustments, as well as for initiating new activities upon completion of the project identified in an existing agreement, are described in the next chapter.

# VIII. AGREEMENT MODIFICATIONS

After an agreement has been implemented, it sometimes becomes necessary to modify the vehicle in some manner or to negotiate a new agreement. Three types of modifications may be pertinent: (1) adjustments to existing projects, (2) initiation of a remedial design and/or remedial implementation at the completion of the already-funded remedial planning project, or (3) initiation of operation and maintenance. This chapter presents procedures and identifies responsibilities for effecting modifications and implementing new activities. As such, the chapter has three parts, corresponding to the three categories of adjustments.

The SPO and RSPO are responsible for initiating and processing agreement modifications; specific responsibilities of these personnel are summarized in Exhibit VIII-1, on the following pages.

## A. PROJECT ADJUSTMENTS

Project adjustments consist of alterations in the amount, terms, conditions, project period, or some other administrative, technical, or financial aspect of the agreement. Depending upon the significance of the change, adjustments can be made either through formal amendments or in writing between the RSPO and the SPO. (Some agreement adjustments will require prior changes in the RAP.)

Criteria for determining the type of adjustment required and the responsibilities of the RSPO and SPO in effecting these adjustments are discussed below for both State- and EPA-lead projects. They are also presented graphically in Exhibit VIII-2, following Exhibit VIII-1.

### A.1 Adjustments to State-Lead Projects

Significant changes occur when:

- Objectives and/or scope of the project, as funded, are altered

- Funds obligated under one remedial accounting code will be used for a different remedial activity or a different site

- There is any increase or a substantial decrease in the project period or budget

EXHIBIT VIII-1
AGREEMENT MODIFICATIONS

| ACTIVITY | RESPONSIBILITIES |  |  |  | WORK PRODUCTS | ADDITIONAL GUIDANCE |
|---|---|---|---|---|---|---|
|  |  | STATE-LEAD |  | EPA-LEAD |  |  |
| 1. Project Adjustments | SPO: | . Identifies changes to be made to Cooperative Agreement<br>. Negotiates minor and administrative changes with RSPO<br>. Initiates amendment request, if required | SPO: | . Negotiates changes to EPA-lead agreements with RSPO<br>. Effects minor changes to EPA-lead agreements in writing | . Letters between SPO and RSPO making changes<br>. Amendment request<br>. Formal amendment | . 40 CFR Part 30.700-705 |
|  | RSPO: | . Approves minor changes and concurs on administrative changes, with necessary approvals<br>. Forwards State amendment request to Regional Award Official | RSPO: | . Identifies changes that must be made to State-lead agreement<br>. Determines whether changes require amendment<br>. Negotiates and effects minor changes in writing with SPO<br>. Initiates amendment request, if required |  |  |
|  | ZONE MGR: | . Coordinates with OERR-FCC on transfer of funds |  |  |  |  |
| 2.A Initiation of Remedial Design and Remedial Action - Record of Decision | SPO: | . Coordinates with RSPO to prepare ROD<br>. Acts as chief point of contact for State in ROD preparation<br>. Renegotiates agreement with RSPO, if required | SPO: | . Same as State-lead | . Record of Decision<br>. Supporting documentation<br>. Transmittal memo | . Record of Decision Guidance, OSWER, August 25, 1982,<br>. Appendix O, Sample Record of Decision |
|  | RSPO: | . Prepares ROD, transmittal memo, and compiles documenting information<br>. Coordinates Regional review and concurrence<br>. Submits ROD to appropriate personnel in HQ<br>. Renegotiates agreement with State, if required<br>. Makes change in RAP to approve new activity | RSPO: | . Same as State-lead |  |  |
|  | ZONE MGR: | . Coordinates HQ review, concurrence, and approval of ROD | ZONE MGR: | . Same as State-lead |  |  |

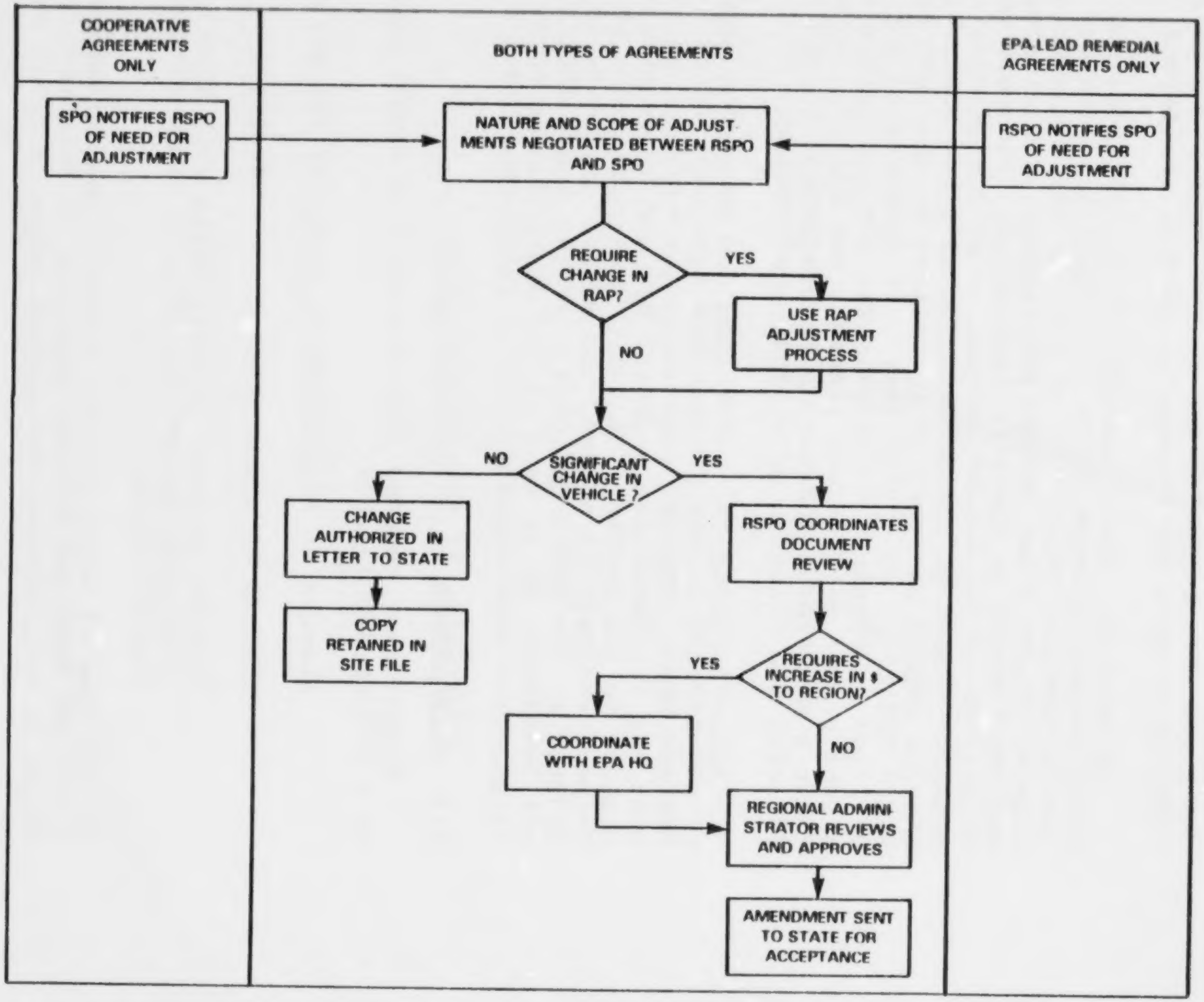
VIII-1.a

EXHIBIT VIII-1
AGREEMENT MODIFICATIONS

| ACTIVITY | | RESPONSIBILITIES | | | WORK PRODUCTS | ADDITIONAL GUIDANCE |
|---|---|---|---|---|---|---|
| | | STATE-LEAD | | EPA-LEAD | | |
| 2.B Initiation of Remedial Design and Remedial Action - Incorporating RD/RA into an Agreement | SPO: | . Develops C/A application/ amendment<br>. Develops C/A provisions<br>. Submits Revised CRP, certification letter, Procurement Check-list intergovernmental review comments | SPO: | . Acts as chief point of State contact in modifying MOU or negotiating SSC<br>. Submits new State letter of request (if applicable)<br>. Negotiates agreement terms with RSPO and reviews agreement during development<br>. Reviews CRP<br>. Submits certification letter, as necessary | . Agreement amendment or new remedial agreement | . Guidance, Chapters 3-5 |
| | RSPO: | . Provides consultation and technical assistance, as requested<br>. Coordinates approval of agreement/amendment | RSPO: | . Negotiates agreement terms with RSPO<br>. Develops MOU modifications/SSC<br>. Submits CRP<br>. Coordinates EPA approval of MOU amendment or SSC | | |
| | ZONE MGR: | . Supports RSPO, as requested | ZONE MGR: | . Supports RSPO, as requested | | |
| 3. Initiation of Operation and Maintenance | SPO: | . Develops C/A application/amendment<br>. Develops C/A provisions<br>. Submits revised CRP, certification letter, Procurement Checklist, intergovernment review comments | | | . Cooperative Agreement or amendment | . Guidance, Chapter 3 |
| | RSPO: | . Provides consultation and technical assistance, as requested<br>. Coordinates approval of agreement/amendment | | | | |
| | ZONE MGR: | . Supports RSPO, as requested | | | | |

# EXHIBIT VIII-2

## PROJECT ADJUSTMENTS APPROVAL PROCESS


COOPERATIVE AGREEMENTS ONLY
BOTH TYPES OF AGREEMENTS
EPA-LEAD REMEDIAL AGREEMENTS ONLY
SPO NOTIFIES RSPO OF NEED FOR ADJUSTMENT
NATURE AND SCOPE OF ADJUSTMENTS NEGOTIATED BETWEEN RSPO AND SPO
RSPO NOTIFIES SPO OF NEED FOR ADJUSTMENT
REQUIRE CHANGE IN RAP?
YES
USE RAP ADJUSTMENT PROCESS
NO
NO
SIGNIFICANT CHANGE IN VEHICLE ?
YES
CHANGE AUTHORIZED IN LETTER TO STATE
COPY RETAINED IN SITE FILE
RSPO COORDINATES DOCUMENT REVIEW
YES
REQUIRES INCREASE IN $ TO REGION?
COORDINATE WITH EPA HQ
NO
REGIONAL ADMINISTRATOR REVIEWS AND APPROVES
AMENDMENT SENT TO STATE FOR ACCEPTANCE

- A rebudgeting of funds occurs, involving either a transfer between construction and another object class category or a change in the amount of indirect costs.

A formal amendment must be issued by the Award Official in the event that a significant change occurs; one is also required to make any changes in special conditions.

In contrast, formal amendments are not required for minor project changes which are consistent with the project's remedial objectives -- such as small budget shifts between object class categories (except as indicated above) and adjustments to the work plan within the scope and objectives of the funded project -- or for administrative changes -- such as the designation of a new RSPO. Such changes should be approved in writing by the RSPO or the Award Official, as appropriate. If approval of the Award Official is required -- usually for administrative alterations -- the RSPO should transmit the State's request and draft a memorandum indicating RSPO approval to the Award Official for issuance of written confirmation.

Responsibility for requesting and obtaining approval of adjustments to the Cooperative Agreement rests with the SPO and RSPO. The SPO identifies the need for an adjustment and initiates the approval process by submitting a request to the Region. The RSPO then determines whether a formal amendment is needed, and if so, transmits the request to the Award Official. If the Award Official signs the amendment, it is sent to the State for acceptance and is executed upon signature by an authorized State official.

### A.2 Adjustments to EPA-Lead Projects

Significant changes that may merit a formal amendment to a MOU or SSC include:

- Changes in objectives or scope of the project
- Changes to other terms of the agreement
- Changes in total project costs such that total costs will exceed the ceiling limit set in the payment terms.

In the case of minor project changes, the agreement usually gives the RSPO and SPO the authority to make modifications which do not increase the project scope or total costs.

Responsibility for identifying the necessity of and obtaining approval for changes to an EPA-lead project lies with the RSPO and the SPO. The RSPO should determine when the agreement requires modification, whereupon the RSPO should negotiate these with the SPO. Such changes can be implemented in written correspondence between the project officers.

A formal amendment to the SSC should be negotiated between the RSPO and the SPO. When agreement has been reached on the terms of the amendment, the RSPO should prepare an amending document and forward it to the Regional Administrator (RA) for approval. After the document has been signed by the RA, it should be transmitted to the SPO to obtain the signature of an authorized State official. Upon signature, the amendment is executed.

## B. INITIATION OF REMEDIAL DESIGN AND REMEDIAL ACTION

Following completion of a feasibility study, it is necessary to negotiate a new agreement or modify the existing one to cover remedial design and allow the initiation of remedial implementation; this is the second type of agreement modification. The new activities must also appear in a final, approved RAP. Prior to either of these, however, the selected remedy must be formally approved by the AA, SWER. Approval is documented through use of a Record of Decision (ROD). The remainder of this section provides a general description of the approval process for a remedy as well as the incorporation of remedial design and/or remedial implementation into an agreement between EPA and the State.

### B.1 Records of Decision (RODs)

Pursuant to section 104(c)(4) of CERCLA and subsequent delegations of authority, the AA, SWER is required to specifically select any remedial action prior to its initiation. Although Cooperative Agreements and EPA-lead remedial response agreements will be negotiated and executed in the Regions, the AA, SWER in EPA Headquarters will retain authority for selecting a remedy. Initial remedial measures (IRMs), however, may be selected by the RA; the selected IRM must also meet NCP requirements.*

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* Selection of IRMs not involving off-site storage, treatment, or disposal may not require completed ROD packages as outlined in this section; however, approval should be incorporated into a modified ROD, an Action Memorandum, or some other document signed by the RA. Selection of IRMs involving off-site storage, treatment, or disposal must be documented in a ROD.

The ROD is an approval and briefing document developed for obtaining and officially recording the AA's selection of a specific remedy. It is sent from the RA to the AA, recommending either a remedial option or the "no action" alternative for the site, and should contain the following information:

- Background data on the site
- References to analyses and reports reviewed in determining the appropriateness of the remedy
- Declarations that the State has been consulted in the determination of the appropriate remedy; that the selected option is cost-effective and appropriate when balanced against use of the Fund to respond to other sites; and that the option effectively mitigates or minimizes danger to, and provides adequate protection of, public health, welfare, or the environment
- For actions involving off-site disposal, declarations that the action is more cost-effective than other remedial actions; will create new capacity to manage hazardous substances; or is necessary to safeguard public health, welfare, or the environment
- A summary of the selected remedial options and their costs.

The ROD should also include a section to document the approved period and extent of EPA cost-sharing for O&M activities. This section should contain the following information:

- Identification of O&M necessary for the selected remedy, including on-site monitoring
- Length of time O&M will be required
- Total estimated O&M costs
- Identification of the State agency which will be responsible for O&M
- The RA's recommendation of the period of time (up to a maximum of one year) during which EPA will share in the costs of O&M.

When recommending the period of time for EPA O&M cost-sharing, the RA should consider the individual circumstances of both the site and the State involved. Factors which may be taken into account include the type and cost of the O&M, financial capability of the State, and the importance of the O&M activities to the effectiveness of the remedy. Data contained in the O&M section will be a factor in the AA's selection of remedy; the cost-effectiveness of an alternative can therefore be judged on total life cycle costs, including those for O&M, rather than solely upon costs of the remedial action itself. Active involvement of legal staff in preparing the O&M section is important since cost recovery efforts will include O&M costs.

Attachments to the ROD should provide sufficient information to justify the recommended remedy. These should include the following components:

- A summary sheet, which can be used to brief the AA on the proposed remedy and site requirements
- A more detailed narrative summary describing the site, its enforcement status, and the rationale for recommending an action
- Other supporting documentation, such as the feasibility study report, analysis of the recommended alternative in terms of RCRA requirements, and a responsiveness summary which contains a review of public inquiries and comments, the issues and concerns raised, and how EPA or the State responded (see Community Relations Policy," May 9, 1983, in Appendix P).

The ROD package should also highlight any potential problems or policy issues affecting the AA's decision and should demonstrate close coordination among EPA, the State, and the local community.

The RSPO, with assistance from the SPO and the Regional Superfund Community Relations Coordinator (RSCRC), is responsible for developing both the ROD and a memorandum from the RA, and transmitting the ROD to EPA Headquarters. The transmittal memorandum contains the RA's recommendations to the AA and the estimated costs of the recommended remedy, including State and EPA O&M costs. Representatives of the State as well as EPA and State legal and enforcement staff should be actively involved in preparing the ROD package.

The ROD package, containing the ROD, ROD attachments, and the transmittal memorandum, should be sent to the Hazardous Site Control Division (HSCD) for Headquarters review and concurrence. Following this review, the package will be forwarded to the AA, SWER for approval and signature. The AA is not obligated to authorize an entire remedial implementation project. It is possible that, for purposes of Fund-balancing, the AA may approve an obligation only for one operable unit or activity (such as remedial design) or may delay funding for O&M until a later time.

For a more detailed description of the ROD and procedures for its development and approval, refer to Record of Decision Guidance, OSWER, August 25, 1982. A sample ROD with supporting documentation is also provided in Appendix O.

### B.2 Incorporating Remedial Design and Remedial Action Into an Agreement Between EPA and the State

Once the ROD has been approved and the project included in the Region's final RAP, development of a new agreement or an amendment to an existing agreement between EPA and the State can begin. When there is an existing Cooperative Agreement or SSC for the site, initiation of remedial design and/or remedial implementation will normally be accomplished through an amendment to the existing agreement.

The amendment negotiation process generally follows the steps identified in Chapters III-V of this document. When an MOU or State letter of request is used to cover remedial planning at the site, the State may amend the MOU or may submit a new request letter for the remedial design. However, a Cooperative Agreement or an SSC must be negotiated before remedial implementation can be undertaken.

In any case, EPA and the State must agree upon a project SOW, develop budgets (for a Cooperative Agreement), negotiate State cost-sharing terms (for an SSC), address EPA general and programmatic requirements, and review and approve the resulting agreement in the manner described earlier in this document. Refer to the appropriate chapters of this guidance for detailed procedures for completing these steps.

If, however, the AA selects the "no action" alternative presented in the ROD for the site, any existing agreement is terminated.

## C. INITIATION OF OPERATION AND MAINTENANCE

Following completion of a remedial action, the State must assume responsibility for any O&M requirements associated with the remedy. This will begin with the period during which EPA shares in the costs of O&M (for a period not to exceed one year) as formally approved by the AA, SWER.

The State is required by CERCLA section 104(c)(3)(A) to assure that it will assume responsibility for all O&M activities. In keeping with this provision, it is EPA policy that all O&M activities for which the Agency provides a cost share will be State-lead. Any EPA cost-sharing approved by the AA, SWER in the ROD must therefore be provided through a Cooperative Agreement. If the remedial action has occurred under a Cooperative Agreement, that Agreement will normally be amended to cover O&M cost-sharing. EPA's share of O&M costs may be obligated at the same time as Federal funds for the remedial action, if the remedial action is of relatively short duration, or they may be obligated when that action is nearly completed. In either case, the SOW for the O&M portion of remedial implementation may be approved at the time that the remedial action is funded.

If a remedial action occurs through an SSC, the State must enter into a Cooperative Agreement with EPA to obtain any approved O&M cost-sharing. Procedures for developing a Cooperative Agreement can be found in Chapter III of this document.

# APPENDICES

VIII 8

# INTRODUCTION TO THE APPENDICES

The appendices, following, are presented here to:

- Provide detailed instructions for certain events and activities described in the text
- Provide examples of important documents, attachments, provisions, and articles described in the text
- Provide background documents that will aid in understanding important Superfund program policies
- Identify and define key terms used in this document
- Identify other reference documents that may assist the reader in selected areas.

These have been developed to be used in conjunction with the text, providing additional information where needed.

The appendices have been referenced in appropriate sections of the text and are, as closely as possible, arranged to reflect the order in which they are referenced. A standardized format has been used to introduce each of the appendices. The short introduction included in each appendix describes:

- Purpose of the appendix
- Important background information necessary to understand the appendix
- Summary of the appendix contents.

To assist the reader in resolving questions not answered by the text or individual appendices, the introduction identifies, where appropriate, the author/originating office of any document shown in the appendix.

# APPENDIX A

[RESERVED]

# APPENDIX B

## ACTION MEMORANDUM GUIDANCE

### PURPOSE

This appendix has been provided to assist Regional Site Project Officers (RSPOs) and other Regional staff in the development of Action Memoranda.

### BACKGROUND

An Action Memorandum is an optional EPA Internal document in which the Regional Administrator authorizes a remedial planning project and, in some cases, an initial remedial measure (IRM), at one or more hazardous waste sites. It clarifies any site-specific issues and summarizes site background information, proposed community relations and remedial activities, and the status of enforcement actions. In addition, Action Memoranda recommend a course of action to be followed in conducting remedial activities at the site(s).

Action Memoranda are developed prior to or simultaneously with the negotiation of an agreement to proceed with remedial activities at one or more sites. Preparation of the Action Memorandum is usually the responsibility of the designated RSPO. Necessary information can usually be obtained from the Remedial Action Master Plan (RAMP) (if one has been prepared for the site), community relations and Regional enforcement staffs, and the State Project Officer (SPO), if one has been selected. If the Regional Administrator elects to use an Action Memorandum for a project, the document should be finalized and approved prior to the award of a Cooperative Agreement, execution of an MOU, or EPA action upon a State letter of request.

### APPENDIX SUMMARY

For the use of RSPOs, this appendix contains the following guidance:

- An annotated outline of an Action Memorandum
- An example of an approved Action Memorandum.

Action Memorandum review and approval procedures will vary, depending upon the requirements and organization of individual Regions. However, review by the Office of Regional Counsel is necessary to satisfy legal requirements.

## 1. SUGGESTED ACTION MEMORANDUM FORMAT

### I. HEADING

SUBJECT: Authorization to Proceed with Remedial Planning Activities at the ABC Site, City, State

FROM: Director, Regional Waste Management Division

TO: Regional Administrator

### II. PURPOSE

A. Basic Statement of Request: Briefly state the general subactivities requested -- remedial investigation/feasibility study and/or an IRM -- and the site location.

B. Lead Management Responsibility: For each activity and subactivity included in the Action Memorandum, identify (where the State has expressed its intentions) whether EPA or the State will take lead management responsibility. If the State has opted to assume the lead, identify the State agency that will manage the remedial response.

### III. BACKGROUND

A. Position on Priorities List: In one sentence, state that the site is on the National Priorities List and, if possible, what priority the State has given remedial activities at that particular site.

B. Physical Location of the Site: Name the county (or parish), township, or incorporated unit in which the site is located and give distances from nearest populated areas and other points of reference.

C. Surrounding Areas: Describe the areas adjacent to the site, such as population centers; any areas protected by statute, such as parks and historic sites; sensitive ecosystems; distances to sources of drinking water; etc.

D. Site Setting/Description:

1. Physical Description of the Site - Briefly outline the physical characteristics of the site, such as size, presence of buildings or containment areas, waste lagoons, etc.

2. General Character of the Site - Explain past waste disposal practices at the site. Indicate whether the (potential) contamination is due to drums, bulk liquids, contaminated soils, spills, etc.

3. Waste Management - Describe any existing structures or measures that would either mitigate or accelerate the release of any on-site materials (e.g., a containment berm, site security, fencing, and similar measures).

E. Quantities and Types of Substances Present: Identify, quantify, and briefly describe any hazardous substances of critical concern. To the extent possible, this should be done in terms of waste categories, such as priority pollutants.

F. Evidence of Release: Note any contaminated drinking water wells, either private or municipal, and any evidence of ecosystem damage. Indicate any releases to environmental media. If any off-site monitoring has been performed, relate the substances identified to those found on-site and describe concentrations of off-site pollutants.

G. Potential Exposure of Public or Sensitive Ecosystems: Briefly describe any indication that the surrounding areas and residents may be exposed to hazardous substances from the site.

H. Previous Actions to Abate Threat: Describe any privately or publicly sponsored activities, the organization that initiated them, their results, and dates of occurrence. Outline any monitoring, inspections, or sampling performed at the site and briefly summarize the results.

I. Current Actions to Abate Threat: Describe any public or private activities that are currently under way or planned and their estimated costs and completion dates.

IV. ENFORCEMENT (see attachment)

V. COMMUNITY RELATIONS

A. Level of Citizen Concern: State whether the level of citizen concern is high or low. Briefly summarize complaints/allegations by the general public that the site has had or is having an adverse impact on health or economic welfare. Note whether any citizen groups have expressed concern about the site.

B. Community Involvement: Cite any history of community involvement with the site, such as circulating petitions for site action or staging demonstrations about conditions at the site.

C. Community Relations Program: Briefly outline the specific objectives of the community relations program for the site. Explain the status of the Community Relations Plan (CRP) -- that is, whether a plan has been or is being prepared -- and state that it will be included in the agreement package. Highlight any community relations activities recommended prior to approval of the final CRP.

VI. IMPORTANT POLICY ISSUES (as necessary and applicable)

A. Response Authority: In some instances, decisions must be made in order to request certain activities, such as justification of off-site disposal of hazardous substances under CERCLA section 101(24). Briefly explain any such determination.

B. Cost-Sharing: If the State has not yet secured funding to meet its cost-sharing obligation for any IRM to be included in the project, explain the circumstances and the manner in which the State plans to obtain its share of remedial costs.

C. Other: Describe such policy issues as the question of division of responsibilities between Federal and/or State agencies, unresolved questions regarding agreement with the State or local agencies over recommended remedial actions, unresolved determinations of public ownership and appropriate cost share, and similar issues. Make the description brief and highlight efforts being taken to resolve these issues.

## VII. PROPOSED PROJECT

### A. General Statement

1. Objectives of the Project - Briefly describe the proposed project and the expected results. Explain generic subactivities such as a remedial investigation/feasibility study, etc. (for example, a remedial investigation would determine the degree of contamination on the site and would collect data sufficient to evaluate source control measures). If an IRM is to be undertaken, refer to the documenting information (such as the RAMP, if one exists) and explain how the measure is consistent with the IRM criteria listed in section 300.68(e) of the National Contingency Plan.

2. General Description of the Pathways to be Evaluated - Describe media affecting public health, such as aquifers, air emissions, and surface waters.

B. Costs: Present, in budget format, the total estimated costs for the project as a whole and for each activity and subactivity, and show estimated State and Federal cost shares, if applicable. Estimates will be the "best estimates" for planning subactivities but will be more accurate for remedial design and implementation work associated with any IRMs. Support cost estimates by citing those in the RAMP, when available. Include community relations costs in all cost estimates shown.

C. Project Schedule: Identify the estimated duration of each activity from information contained in the RAMP, if one has been developed.

D. State Share: If the project includes an IRM, identify the percentage of the costs that the State will be required to provide and any credit that the State claims.

E. State Assurances: Acknowledge that the State is aware of any CERCLA section 104(c)(3) assurances required (if the project is an IRM) and is also aware of its other responsibilities for the project.

## VIII. RECOMMENDATION

Conclude with a statement (from the Division Director to the Regional Administrator) recommending approval of the activities requested and acknowledging that the request has been coordinated with the appropriate Headquarters and Regional offices. If the project includes an IRM, also make the following declarations in this section:

- The Region has consulted with the State in determining the necessity of the IRM
- The IRM is both a feasible and cost-effective action when balanced against Fund resources and the need to respond at other sites
- The IRM provides protection to public health, welfare, and the environment.

Make provision for indicating approval of the request, as follows:

Approve____________________

Disapprove____________________

Date____________________

ACTION MEMORANDUM ATTACHMENT
ABC Site
City, State

ENFORCEMENT - CONFIDENTIAL

Enforcement status information should be included as a separate attachment to the Action Memorandum. This information should be completed by the Office of Regional Counsel with input from the Headquarters Office of Enforcement and Compliance Monitoring and State attorneys, if necessary. The attachment should contain the following information, as appropriate.

A. Potential Responsible Parties: Present a general description of the number and types of potentially responsible parties (i.e., generators, transporters, and owners or operators). If a site has one or two primary responsible parties, name them. If a search for potentially responsible parties has been completed, summarize the results and estimate the solvency of the major parties identified.

B. Enforcement Strategy: Summarize the enforcement strategy for notifying, negotiating, and instituting litigation against responsible parties. Include an explanation of whether the State or Federal enforcement attorneys (1) are not going to litigate, (2) are actively pursuing litigation, or (3) have decided to postpone litigation.

C. Previous Enforcement Actions: Describe any previous State or Federal enforcement actions, giving the dates, types of legal actions taken, and outcomes.

D. Enforcement Authority: If litigation is proceeding or is contemplated, identify the statutory authority for litigation (e.g., RCRA section 7003, CERCLA)

E. Probability of Success: Evaluate the probability of timely remedial actions resulting from litigation.

F. Status of Negotiations: State whether negotiations with responsible parties are under way. if so, describe the activities being discussed.

G. Recommendation: Present the course of action recommended by the Regional enforcement attorneys, either exclusively pursuing Federally-funded remedial activities or simultaneously supporting remedial and enforcement actions.

## 2. SAMPLE ACTION MEMORANDUM

To further illustrate the Action Memorandum format described above, this appendix also includes an example of an approved Action Memorandum. The sample Action Memorandum reproduced here provides authorization to proceed with a remedial investigation/feasibility study at the Geneva Industries site in Houston, Texas. It is intended to be used merely as a model to develop Action Memoranda. Contents of individual documents will vary depending upon individual site characteristics and Regional requirements and procedures.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE NOV 3 0 1983

SUBJECT Authorization to Proceed with a Remedial Investigation/Feasibility Study at the Geneva Industries Site, Houston, Texas - ACTION MEMORANDUM

FROM Allyn M. Davis, Director AMDavis
Air and Waste Management Division (6AW)

TO Dick Whittington, P.E.
Regional Administrator (6A)

## Purpose

This request is for authorization to undertake a remedial investigation and feasibility study for source control measures at the Geneva Industries (Furhmann Energy) site in Houston, Texas. The State of Texas has indicated its intention to enter into a Cooperative Agreement for these activities.

## Background

This site was included on the proposed National Priorities List on September 1, 1983. Geneva Industries is located at 9334 Caniff Road, Houston, Texas, in a residential/industrial area. The 13-acre site is about one mile east of Houston Hobby International Airport and 1/4 mile north of the intersection of Interstate Highway 45 and Airport Lane.

The site was the location of a chlorinated biphenyl manufacturing plant in the early 1970s. The site was subsequently used for petrochemical production and waste oil recycling until the plant closed in 1980. The site includes the processing facility, a large waste lagoon, two smaller lagoons, a diked tank area, a drum storage area, and a buried metal scrap landfill. Under the various owners and at various times, the following were produced at the site: biphenyls, chlorinated biphenyls, phenoxy phenol, and non-chlorinated organics such as naptha.

The most immediate problem at the Geneva site is the large quantity of contaminated soils located both onsite and offsite. The site was the location of a PCB manufacturing plant in the early 1970s. Texas Department of Water Resources (TDWR) inspectors noted frequent process spills during this time. The site was later used for petrochemical production and waste oil recycling until the plant closed in 1980. The present owner purchased the plant as a salvage operation. Contaminated soils were identified in drainage paths outside the plant boundaries, which lead to Berry Bayou and the Houston Ship Channel, and finally into the Gulf of Mexico. These contaminated soils become suspended in runoff waters, carrying the insoluble PCBs off the site. Data from surface water samples collected by the Texas Department of Health indicate PCB-contaminated sediments may have already been carried at least 3 miles downstream. Some vertical contamination of the soil is also indicated.

Approximately 1.1 million gallons of contaminated rainwater have collected in a large unlined lagoon about 1/4 acre in size, and pits, sumps, and tanks located on the site. EPA Field Investigation Team (FIT) and TDWR inspectors have noted wastewater appeared to be seeping through the dike in one corner of the lagoon. There was also contaminated rainwater in 3 small lagoons adjacent to the main lagoon, inside the diked tank area, and in a concrete sump in the process area. Approximately 6 feet of PCB contaminated sludge are estimated to underlie the main lagoon. Wastewater and sludge is currently being removed as part of an EPA lead planned removal.

Approximately 500 steel drums containing wastes and unused products are scattered throughout the site. Many of the drums are corroded and leaking, and some have no lids. About 100 of the drums contain biphenyl sludges; the rest contain flammable solvents, acids, oxidizers, and solids, many containing high concentrations of PCB. Some contaminated equipment is also located onsite. A PCB distillation tower and associated pipes have not been cleaned since the early 1970s. Most of the other equipment onsite was used for storing and reclaiming waste oils. The area surrounding the site is a mixture of residential, commercial, and industrial zones. Houses are located approximately 50 feet from the boundary of the site. Census figures show that 1,044 people live within 1/4 mile of the property line, and 9,156 people live within 1 mile of the center of the site. Samples from monitor wells indicated levels of toxic organics, including PCBs, phenol, xylene, and naphthalene, potentially contaminating the groundwater supply including the major water supply aquifer for the city of Houston.

The EPA is currently performing a planned removal action at the Geneva site. The action began on October 17, 1983, and will last approximately 10 weeks. The action includes:

1) removal and disposal of offsite contaminated soils containing greater than 50 ppm PCBs;

2) removal and disposal offsite of wastewater lagoon sludge;

3) surveillance of onsite soil contamination;

4) installation of PVC, clay, and asphalt caps over onsite soils containing greater than 50 ppm PCBs;

5) removal and disposal of onsite wastewater; and

6) removal and disposal of drummed waste, waste chemical piles, and loose asbestos.

## Community Relations

The level of concern shown by the residents has generally been high. The media and elected officials have also shown interest in the site. A public meeting was held on October 6, 1983, in South Houston, attended by local residents, media, local, State, and Federal officials. Major concerns expressed at the meeting were the potential contamination of the city's water supply and potential health effects from the PCB contamination. The Texas Department of Health reports only one complaint related to the site involving two children who may have developed chemical rashes or burns after playing in a drainage ditch near the site. This report has not been substantiated to date.

The mayor of South Houston has appointed an environmental coordinator for his staff and is interested in coordinating the monitoring at the site. This coordinator filed a Freedom of Information request to the EPA for all data and related documents concerning the Geneva site. The goals of the community relations plan include educating officials and the public about the planned activities so that a) they have a clear understanding of what can be accomplished at the site; and b) they readily accept the situation.

The Community Relations Plan is included as a part of the Cooperative Agreement application.

Enforcement (See Attached)

## Proposed Project

The general objective of this action is to complete a remedial investigation and feasibility study primarily to evaluate the need for source control measures and for offsite measures as appropriate. The remedial investigation will 1) identify target receptors (population at risk, sensitive ecosystems, threatened resources); 2) fully define the lateral and vertical extent of contamination in surface waters, groundwaters, sediments, and soils; and 3) assess the potential or actual damage to biota in the area.

The feasibility study will include analysis of alternatives for source control and offsite remedial actions in accordance with Section 300.68 of the National Oil and Hazardous Substances Contingency Plan (NCP) if any further remedial actions are recommended.

Project Cost and Schedule

| | Time | Estimated Cost |
|---|---|---|
| Remedial Investigation | 9 months | $ 367,000 |
| Feasibility Study | 6 months | 203,000 |
| Total | 15 months | $ 570,000 |

The lead agency for these studies will be the Texas Department of Water Resources (TDWR).

Recommendation

This request has been coordinated with the appropriate Regional and Headquarters offices and the allocation was made in the Region 6 Remedial Accomplishments Plan; therefore I request that you fund a total of $570,000 for the remedial investigation and feasibility study at the Geneva Industries (Furhmann Energy) site.

Approve Dick Whittington for

Disapprove ________________

Date Nov. 30, 1983

ENFORCEMENT SENSITIVE
Geneva Action Memorandum Attachment

Enforcement

Enforcement information has not been reproduced here. This attachment to the Action Memorandum should be prepared by Regional and Headquarters enforcement staff according to the annotated outline, above.

# APPENDIX C

## PROCEDURES FOR DEVELOPING AND PROCESSING CERCLA STATE CREDIT CLAIMS

### PURPOSE

This appendix has been provided to assist State staff in developing and EPA personnel in carrying out their responsibilities for processing CERCLA State credit claims. It also contains procedures for EPA officials to use when communicating information about the status of those claims to State officials.

### BACKGROUND

CERCLA section 104(c)(3)(C) provides that EPA may grant the State a credit against its share of remedial costs, if any, for direct out-of-pocket expenditures or obligations of non-Federal funds by the State or a political subdivision thereof between January 1, 1978, and December 11, 1980. It is the State's responsibility to identify potentially creditable expenditures or obligations and to submit to the EPA Region a claim for credit under section 104(c)(3)(C).

The State should submit its credit claim, addressed to the Regional Site Project Officer (RSPO), prior to or early in the development of a Cooperative Agreement application or a Superfund State Contract (SSC) for activities that require cost-sharing. The RSPO and the appropriate Zone Manager in EPA Headquarters are responsible for conducting an initial review of the submission to ensure that it conforms with EPA policy. Once their approval has been given, the EPA Office of the Inspector General (OIG) Internal Audit Division will schedule an audit of the submission. Based on the audit findings, EPA will identify to the State those costs allowed for credit.

### APPENDIX SUMMARY

This appendix is organized into three sections. Section 1 contains copies of two EPA memoranda pertaining to credit claims. "CERCLA Credit Period Costs," a memorandum from the Director, Office of Emergency and Remedial Response, describes the requirements for and content of an acceptable CERCLA State credit claim. "CERLA Credit," a memorandum from the Acting Assistant General Counsel for Grants states that funds spent by States under other grant programs, in excess of the amount required, may be allowable for CERCLA credit; this finding somewhat modifies the criteria outlined in the previous memorandum. Both of these should be used by States in developing their individual credit claims.

The second part of this appendix describes actions that the RSPO, Zone Manager, and CERCLA Credit Coordinator should take after the State has submitted a credit claim. Detailed procedures are provided for eight steps:

- State submission of the credit claim
- EPA Regional and Headquarters review for policy conformance
- Audit by the OIG
- State response to the OIG's draft audit report
- Development of a final audit report
- Formal response to the OIG
- Notification of the State
- Application of the verified credit to the State's cost share.

Section 3 supplements the information in the second section by providing examples of correspondence concerning the audit report for the Keefe Environmental Services site in New Hampshire. The letters reproduced here were sent from Headquarters officials; however, they may be tailored, as appropriate, by Regional EPA officials and staff who are responsible for responding to CERCLA credit claims.

NOTE: This appendix contains post-delegation procedures. Any actions on credit claims prior to delegation will occur in Headquarters in accordance with past procedures.

## 1. PREPARING CERCLA STATE CREDIT CLAIMS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 23 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE
SFPG-83-2

MEMORANDUM

SUBJECT: CERCLA Credit Period Costs

FROM: William N. Hedeman, Jr., Director Bill Hedeman
Office of Emergency and Remedial Response (WH-548E)

TO: Regional Administrators
Regional Superfund Coordinators
Regions I-X

During the past year, the Office of Inspector General (IG) has audited a number of CERCLA credit period costs based on information supplied by States. As a result of their experience to date, the IG has provided the following guidance for future requests for verification of CERCLA credits from States:

1. States should identify the specific amount being claimed for credit. Estimated amounts are not acceptable.

2. States should identify which units of government (State agency, County, local) incurred the credit costs.

3. Costs by governmental unit should be provided in detail by cost element (i.e., labor, travel, contracts, etc.).

4. A brief description of the specific function performed by each governmental unit as it pertains to the CERCLA site should also be provided.

5. Each governmental unit should provide a certification that the credit period costs have not been reimbursed or used for matching purposes under any other Federal program or grant. In addition, the governmental unit's certification should also state it was not reimbursed for any of its costs by non-Federal sources (i.e., potentially responsible parties). This certification must be signed by the State's fiscal manager or the State agency's financial director.

Regions should begin working with States as soon as possible to ensure that CERCLA credit claims for National Priority List sites satisfy these requirements. Requests for verification of State CERCLA credit claims should be sent to the State and Regional Coordination Branch (SRCB), Hazardous Site Control Division (WH-548E), for processing. SRCB will establish a credit account by site to ensure proper application of the credit to a State's required match and schedule an audit with the IG's office.

Your cooperation in implementing this procedure will be appreciated. Any questions on this policy may be referred to Sam Morekas, Chief, State and Regional Coordination Branch, FTS: 382-2443.

cc: Steven A. McNamara, Chief,
Internal Audits Staff (A-109)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 16 1984

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: CERCLA Credit

FROM: Allan E. Brown
Acting Assistant General Counsel
for Grants

TO: Sam Morekas, Chief
State and Regional Coordination Branch

This responds to your request for our opinion as to whether you may allow certain State expenditures as statutory credit under section 104(c)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

Section 104(c)(3) provides, in relevant part that:

> [t]he President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before the date of enactment of this Act [December 11, 1980] for cost-eligible response action and claims for damages compensable under section 111 of this title relating to the specific release in question[.]

1. Are funds used by States as required match for federally-assisted projects allowable as credit?

It is a general rule that the non-federal share of a particular grant may not be used by a grantee to match funds provided under another federal grant program. 32 Comp. Gen. 561 (1953). The basis for this rule is that using local match from one federally assisted project to offset match required for another would mean that the match requirement in one or the other of the projects would not be met. Therefore, monies expended by States to meet required non-federal match are not allowable as credit under section 104(c)(3).

2. Can funds spent by States in excess of the required match for federally assisted projects be allowed as credit?

States apparently spent funds in excess of the required State match ("overmatch") on federally assisted hazardous waste clean-up projects that were undertaken under programs established prior to the enactment of CERCLA. These States claim the overmatch qualifies as credit under section 104(c)(3). An argument can be made that under the general funding allowability principles in Office of Management and Budget (OMB) Circular A-87 the overmatch does not qualify as credit. Such an argument would be based on the principle that to be allowable, costs must "not be allocable to or included as a cost of any other federally financed program in either the current or a prior period." §C(1)(f). However, the particular provisions and requirements of each assistance program must be considered in applying the general principles in OMB Circular A-87. It is our view that under section 104(c)(3) State overmatch may qualify as credit.

Section 104(c)(3) requires a State match for certain CERCLA response actions but directs the President to offset such match with any documented direct out-of-pocket non-federal funds spent by the State at the site in the two years prior to the enactment of CERCLA. Thus, a State's cost share is to be reduced to the extent that State or local governments can document that they paid for response actions at a site. The purpose of the credit was twofold: to avoid penalyzing States that had spent their own funds on necessary cleanup and to encourage States not to delay action while the CERCLA legislation was pending. S. Rep. No. 848, 96th Cong., 2d Sess. 53, 58 (1980). Congress recognized that the deliberations concerning the CERCLA legislation could be lengthy and sought ways to ensure that action on serious hazardous waste problems was not delayed during those deliberations. It was apparently anticipated that with CERCLA pending, the States might be inclined to delay necessary action requiring the expenditure of their funds if federal funds might soon be available. The credit was intended to encourage States to expend their own resources on cleanups before CERCLA became law.

It is reasonable to assume that Congress did not intend that the incentive created by the section 104(c)(3) credit be weakened by disqualifying from the credit State overmatch at cleanup sites where federal assistance was also available. A contrary reading of section 104(c)(3) would mean that any federal assistance at a site would preclude the State from receiving a credit for its contribution to the site, even where the State's commitment greatly exceeded the amount of the federal assistance. Therefore, it is our view that there is support for allowing State overmatch to be included as credit at a particular site, if the Office of Emergency and Remedial Response wants to adopt such a policy.

## 2. PROCEDURES FOR PROCESSING CERCLA STATE CREDIT CLAIMS

CERCLA section 104(c)(3) provides that EPA may grant the State a credit against its share of the costs under any Superfund State Contract or Cooperative Agreement for direct out-of-pocket expenditures or obligations of non-Federal funds incurred by the State or a political subdivision thereof between January 1, 1978, and December 11, 1980. These procedures detail the processing of State credit claims for sites in the remedial program and the ensuing audit report of the EPA Office of the Inspector General (OIG). These procedures do not apply to any other audits conducted by the OIG (e.g., interim and closeout audits of Cooperative Agreements and internal program audits of contracts).

This guidance is intended for all RSPOs and Headquarters Zone Managers. The designated CERCLA Credit Coordinator is in the State and Regional Coordination Branch (SRCB), phone: FTS 382-2443.

For convenience in use, this guidance is organized as follows:

- References
- Overview of the procedure
- Detailed procedural steps
- Resolution of unresolved issues.

### A. REFERENCES

The following references apply:

1. Director, OERR Memorandum of December 23, 1982; Subject: CERCLA Credit Period Costs [Reproduced in Section 1]

2. Chief, SRCB Memorandum of December 17, 1982; Subject: Budgeting/Tracking of Funds in Cooperative Agreements

3. Director, OERR Memorandum of December 15, 1982; Subject: Treatment of State Recoveries from Responsible Parties

4. Director, OERR and Director, OWPE Memorandum approved January 21, 1983; Subject: Payment of State Enforcement Costs under Superfund

5. Acting Assistant General Counsel for Grants Memorandum of February 16, 1984; Subject: CERCLA Credit [Reproduced in Section 1].

## B. OVERVIEW OF THE PROCEDURE

The procedure for submission, processing, approval, and application of State credit claims is displayed graphically in Exhibit C-I, on the following page. It involves the following eight steps:

- The State will submit a claim for credit.
- The Region will review the State credit claim for conformance with established policy. After conformance with policy is confirmed, the Region will request the OIG Internal Audit Division* to perform an audit.
- The OIG will conduct an audit to verify the credit and issue draft findings to the State.
- The State will normally have 30 days to provide a written response to the draft audit findings and may attempt to rejustify items on the claim which the OIG has proposed to question or set aside. (If there are CERCLA policy issues raised in the report, the Region, in conjunction with the Regional Counsel, will respond to these issues.)
- The OIG will issue a final audit report to the appropriate Action Official** which will identify costs that, based on available criteria, are ineligible and/or are not allowable.
- The RSPO will coordinate the development of the program office's formal response to the OIG and EPA's response to the State.
- The State will be notified of the Action Official's final audit findings.
- The verified credit will be applied to the cost of site activities in the manner agreed upon between the State and EPA.

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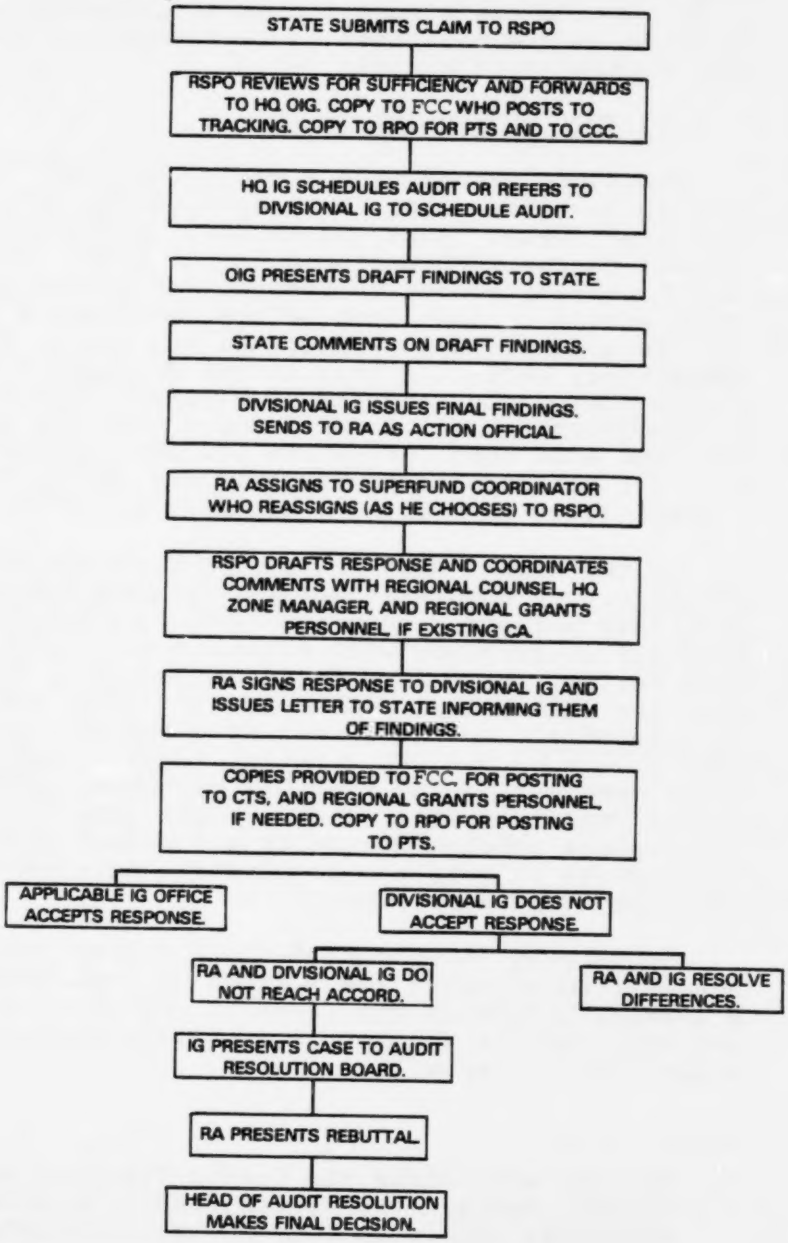
* To reach the Divisional Inspector General for Internal Audits, all requests should be sent to the Headquarters using mail code A-109.

** The appropriate Action Official will usually be the Regional Administrator (RA). An exception occurs when the RA must be recused from participation for a particular reason.

## EXHIBIT C-1
## REVISED CREDIT CLAIMS PROCEDURES


STATE SUBMITS CLAIM TO RSPO
RSPO REVIEWS FOR SUFFICIENCY AND FORWARDS TO HQ OIG. COPY TO FCC WHO POSTS TO TRACKING. COPY TO RPO FOR PTS AND TO CCC.
HQ IG SCHEDULES AUDIT OR REFERS TO DIVISIONAL IG TO SCHEDULE AUDIT.
OIG PRESENTS DRAFT FINDINGS TO STATE.
STATE COMMENTS ON DRAFT FINDINGS.
DIVISIONAL IG ISSUES FINAL FINDINGS. SENDS TO RA AS ACTION OFFICIAL.
RA ASSIGNS TO SUPERFUND COORDINATOR WHO REASSIGNS (AS HE CHOOSES) TO RSPO.
RSPO DRAFTS RESPONSE AND COORDINATES COMMENTS WITH REGIONAL COUNSEL, HQ ZONE MANAGER, AND REGIONAL GRANTS PERSONNEL, IF EXISTING CA.
RA SIGNS RESPONSE TO DIVISIONAL IG AND ISSUES LETTER TO STATE INFORMING THEM OF FINDINGS.
COPIES PROVIDED TO FCC, FOR POSTING TO CTS, AND REGIONAL GRANTS PERSONNEL, IF NEEDED. COPY TO RPO FOR POSTING TO PTS.
APPLICABLE IG OFFICE ACCEPTS RESPONSE.
DIVISIONAL IG DOES NOT ACCEPT RESPONSE.
RA AND DIVISIONAL IG DO NOT REACH ACCORD.
RA AND IG RESOLVE DIFFERENCES.
IG PRESENTS CASE TO AUDIT RESOLUTION BOARD.
RA PRESENTS REBUTTAL.
HEAD OF AUDIT RESOLUTION MAKES FINAL DECISION.

Appropriate documents and data systems (for example, the State Credit Tracking System and EPA's Financial Management System [FMS]) must be updated with the latest State credit information at each step of the process. A more detailed description of each step, and the procedures to be taken where discrepancies or deficiencies occur, may be found in the remainder of this section; the steps are also displayed in Exhibit C-1.

## C. DETAILED PROCEDURAL STEPS

The State should make a claim for credit at a site as soon as possible after it appears on the National Priorities List (NPL). This can be done by sending a written request to the RSPO assigned to the site. Because of the length of time needed to conduct and review an audit, the claim should be made long before the State will need to use the credit. Upon receipt of the claim, the RSPO will immediately forward a copy of the document to the CERCLA Credit Coordinator and the appropriate Zone Manager, both in Headquarters, while retaining a copy for his/her review. The RSPO will then review the State's submission to ascertain its conformance to the guidance contained in Reference 1 (reproduced in Section 1 of this appendix).

If the credit claim corresponds to the established criteria, the RSPO will notify the Zone Manager. Both will then perform a detailed review of the claim to determine its conformance with established policy. Following this review, the CERCLA Credit Coordinator will ensure that the OERR Fiscal Control Center (FCC) posts the claim, as unverified, to the Credit Tracking System*, and will send a copy to the OIG Internal Audit Division with a cover memo requesting that OIG personnel scheduled an audit. The RSPO will also post the information to the appropriate funding documents and budget sheets and incorporate it into the Cooperative Agreement or SSC, as necessary (see Reference 2).

Conversely, if the credit claim does not conform to established criteria (in Section 1), the RSPO will develop a letter, informing the State of the claim's deficiencies, and will send it to appropriate State personnel. Specifically, the letter will:

---

*. The FCC will issue the Credit Tracking System on a monthly basis. The CERCLA Credit Coordinator will circulate copies to Zone Managers to update and verify credit information. Each Zone Manager will coordinate updates with the appropriate RSPO(s) and may provide copies to RSPOs who have sites with pending credit claims.

- Define the criteria of Reference 1 (shown above in Section 1)
- Identify the deficient areas of the State's initial submission
- Inquire whether the State wishes the claim to be applied to the initial remedial action phases of the Cooperative Agreement or SSC (e.g., as a cost share for an initial remedial measure)
- Advise whether the initial credit submission can be used until the amended claim is received.

Upon receipt of the State's revised claim, the RSPO will review it for conformance to the established criteria. If the revised credit submission is found to be in conformance with policy, the RSPO will process it as detailed above.

The OIG will then schedule and conduct -- either through an OIG Divisional Office or through a contractor retained by Headquarters OIG -- the audit of the State's credit claim. After the audit has been completed, the OIG will issue draft findings to the State, offering it the opportunity to comment and present additional supporting information. If the OIG's findings raise CERCLA policy issues, the OIG will also report its findings to the RA. When this occurs, the RSPO will draft a memorandum to the OIG responding on these CERCLA issues; this memorandum must be cleared with the Zone Manager and the Regional Counsel in consultation with the Office of General Counsel. Guidance addressing any issues raised concerning previous audits and the subsequent responses may be provided by the CERCLA Credit Coordinator, if necessary. The RSPO must secure concurrences on this memorandum before forwarding it to the OIG.

Draft audit findings sent to the State should be forwarded to the appropriate official for response. The State may either 1) choose not to comment on the preliminary findings, or 2) attempt to rejustify items questioned and/ or set aside by the OIG by presenting additional documentation. If the State chooses to respond, it should submit its response within 30 days to the OIG for consideration and possible inclusion in the final audit report.

Upon receipt of the State's response (and the RA's, if appropriate), the OIG will evaluate all comments and additional data and, if warranted, will amend the draft audit report. With regard to any individual finding, the evaluation may result in:

- Concurrence with the State's (or RA's) response
- A change in the draft finding by the IG
- An unresolved issue.

The results of this evaluation will be documented in a final audit report. State comments will normally be included in this final report, along with the OIG's response to individual points raised.

Copies of the final audit report will be sent to the RSPO, via the Action Official, for review and development of the Action Official's response, which must be sent within 120 days. It is the RSPO's responsibility to draft the Action Official's final response to the audit report. To obtain necessary input, the RSPO will distribute copies of the final audit report, with a request for comments, to the Zone Manager and other appropriate reviewers. Comments will be included in the draft response.

Upon receipt of all comments, the RSPO will complete the draft response and distribute it -- along with copies of the final audit report, if not previously provided -- for comment and coordination to the Zone Manager, the Office of Regional Counsel, and the RSPO's supervisor. If commenters have raised enforcement issues, appropriate reviewers in the Regional enforcement office should be asked to participate. The RSPO may also confer with the CERCLA Credit Coordinator for guidance regarding issues raised in previous audits and subsequent responses.

After allowing time for review and comment on the draft response and incorporating comments received, the RSPO will complete the draft response letter addressed to the appropriate Divisional Inspector General and a cover memorandum for forwarding to the RA through the Superfund Coordinator. Signatures will be obtained from each of the coordinating offices specified above.

The package (cover memorandum, response letter, and final audit report) will be forwarded through the Superfund Coordinator to the Action Official for signature.* (An example of a response package issued by Headquarters is reproduced in Section 3 of this appendix). The RSPO should also provide copies of the final response to the Project Tracking System (PTS) Regional Project Officer and to the

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* The response must be dispatched within 120 days of the issuance of the IG's final audit report unless an extension is requested and obtained from the IG's office.

Headquarters FCC. A copy of the package should also be forwarded to the Regional Grants office and to the Zone Manager in EPA Headquarters. The RA is responsible for providing a response to the State within 30-45 days of responding to the OIG.

Following receipt of the final audit response, the FCC will post the verified credit to the appropriate tracking systems. Reductions in State credit that affect provision of the State cost share may require amending the State's Cooperative Agreement or SSC.

## D. SOLUTION OF UNRESOLVED ISSUES

Audit findings are closed-out when the Action Official notifies the OIG of acceptable actions taken in response to all recommendations in the audit report. Findings on specific issues will not be closed-out individually.

During the close-out, the Divisional Inspector General may determine that an individual action taken by the Award Official (such as approving an amount of credit in excess of the amount recommended by the OIG's final report) is not acceptable (see Exhibit C-1). If the issue remains unresolved after 180 days, the issue may be referred to the Audit Resolution Board. Proceedings of the board are governed by EPA Order 2730.2A, Management Follow-up on Findings in Audit Reports.

## 3. SAMPLE CORRESPONDENCE CONCERNING STATE CREDIT CLAIMS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 7 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

**MEMORANDUM**

SUBJECT: Report on Audit of Credit Period Costs Claimed by the New Hampshire Office of the Attorney General for Keefe Environmental Services Site. Audit Report No. E5cH3-01-0047-31231

FROM: William N. Hedeman Jr., Director Bill Hedeman
Office of Emergency and Remedial Response

TO: Lee M. Thomas
Assistant Administrator

Section 104(c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), provides that a State shall be granted a credit against the share of costs for which it is responsible under section 104(c)(3) for direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978, and before December 11, 1980, for cost-eligible response actions and claims for damages compensable under section 111, relating to the specific release in question. The National Contingency Plan (NCP) describes the types of cost-eligible response activities that are broadly defined by section 111 of CERCLA.

The State of New Hampshire claimed a credit under section 104(c)(3) of CERCLA of $520,491 for the Keefe Environmental Services site. The claim represented money spent by several New Hampshire government entities and the Office of the Attorney General.

On June 14, 1983, the Inspector General of the Eastern Division issued Audit Report No. E5cH3-01-0047-31231 for the State of New Hampshire's credit claim for this site. In the report, the Inspector General accepted $65,942 and questioned $454,549. I am recommending that you accept the Inspector General's (IG) findings plus an additional $1,275 in expenses, based on the following explanation.

Regarding credit claimed for services and sampling conducted by the Water Supply and Pollution Control Commission, the auditor questioned $17,363 of the $34,379 claimed. The questioned costs reflect the revision of estimates by the State when documentation was reviewed to support the costs. The State accepted the auditor's findings. I, therefore, recommend that you concur with the auditor's findings for these costs.

The auditor accepted the costs claimed by the Bureau of Solid Waste Management of $864. I, therefore, recommend that you concur with the auditor's findings.

The Office of the Attorney General claimed $4,460 for activities related to the site. The Attorney General later revised the claim downward from $4,460 to $1,275 after review of the December 15, 1982, policy guidance issued by EPA's Office of Emergency and Remedial Response (OERR) concerning the allowability of enforcement costs. The Attorney General's Office maintained that the $1,275 was the cost estimated by their office for actual investigative work for the site. Based on a review of the OERR enforcement costs guidance, the Attorney General's Office made the distinction in their revision between investigative work and work conducted to support litigation.

The auditor questioned the entire credit claim made by the Attorney General's Office. He maintained that payment of attorneys was not allowable under the enforcement costs guidance. We, however, do not believe the enforcement costs guidance was ever intended to exclude all attorney's fees. The distinction was meant to be made between actual litigation and overall enforcement work, and investigative work. We believe that the estimate made by the Attorney General's Office of $1,275 of the original $4,460 claimed as investigative work is reasonable. We, therefore, recommend that you accept the $1,275 as a verified credit.

Regarding the costs claimed by the Town of Epping, the auditor questioned $32,726 and accepted $48,062. The questioned costs consisted of those paid to a law firm to represent the Town of Epping for purposes of support in litigation. Based on the State's reading of the OERR enforcement cost policy, the State in their response to the draft audit report did not dispute this finding. The auditor accepted $48,062 claimed by the Town of Epping for investigatory work, sampling and the provisions of expert testimony. I, therefore, recommend that you concur with the auditor's findings regarding expenditures associated with the Town of Epping during the credit period.

The auditor questioned the entire $400,000 credit claim made by the Water Supply and Pollution Control Commission/Attorney General for drum removal activities. These activities were conducted by the responsible parties at no cost to the State. The State maintained that CERCLA should provide credit for responsible party cleanup as an incentive to the State to initiate such actions. Neither CERCLA nor current policy support such an incentive, however. This credit claim does not meet the criteria for credit claims under CERCLA section 104(c)(3) nor is it eligible under section 111 of CERCLA. I, therefore, recommend that you concur with the auditor's findings.

I recommend that the verified credit for the Keefe Environmental Services site be determined as $67,217. The existing cooperative agreement contains a special condition allowing the State to use only $50,000 of their claimed credit toward their required 10 percent cost share of the initial remedial measure. The State was to contribute the balance of their cost share as Federal funds were expended. The State, therefore, will have a credit claim balance of $17,217 to use toward their cost share for future phases of work at the site.

I recommend that you sign the three attached memoranda. The first memo informs the Inspector General for the Eastern Division that you concur with his findings. The second memo informs the Region I Administrator, Michael R. Deland, that New Hampshire's CERCLA credit has been verified and that the Award Official in the Grants Operations Branch in EPA Headquarters will notify the State. The third memo asks Frederick L. Meadows, the Award Official of the Cooperative Agreement, to notify the State that the credit has been verified and that, therefore, the special condition for CERCLA credit in the existing Cooperative Agreement has been satisfied.

If you have any questions on this matter, I am available to meet with you.

Attachments

cc: Michael R. Deland, Regional Administrator, Region I
Frederick L. Meadows, GAD (PM-216)
Lisa Karpf, OIG, Internal Audits (A-109C)
Don Kraft/Becky Kennedy, OPPM/OERR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 12 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

**MEMORANDUM**

SUBJECT: Report on Audit of Credit Period Costs Claimed by the New Hampshire Office of the Attorney General for Keefe Environmental Services Site. Audit Report No. E5cH3-01-0047-31231

FROM: Lee M. Thomas
Assistant Administrator

TO: Sanford Wolfe
Divisional Inspector General for Audits
Eastern Division

Pursuant to EPA Order 2750.2A, I am responding to the recommendations made by you in final Audit Report No. E5cH3-01-0047-31231. The State of New Hampshire claimed a credit under section 104(c)(3) of CERCLA of $520,491 for the Keefe Environmental Services site. The claim represented money spent by several New Hampshire government entities and the Office of the Attorney General.

On June 14, 1983, you issued the final audit report for the State of New Hampshire's credit claim for this site. In the report, you accepted $65,942 and questioned $454,549. I accept your findings plus an additional $1,275 in expenses, based on the following explanation.

Regarding credit claimed for services and sampling conducted by the Water Supply and Pollution Control Commission, you questioned $17,363 of the $34,379 claimed. The questioned costs reflect the revision of estimates by the State when documentation was reviewed to support the costs. The State accepted your findings. I concur with your findings for these costs.

You accepted the costs claimed by the Bureau of Solid Waste Management of $864. I concur with your findings.

The Office of the Attorney General claimed $4,460 for activities related to the site. The Attorney General later revised the claim downward from $4,460 to $1,275 after review of the December 15, 1982, policy guidance issued by the EPA's Office of Emergency and Remedial Response (OERR) concerning the allowability of enforcement costs. The Attorney General's Office maintained that the $1,275 was the cost estimated by their office for actual investigative work for the site. Based on a review of the OERR enforcement costs guidance, the Attorney General's Office made the distinction in their revision between investigative work and work conducted to support litigation.

You questioned the entire credit claim made by the Attorney General's Office. You maintained that payment of attorneys was not allowable under the enforcement costs guidance. The enforcement costs guidance was never intended to exclude all attorney's fees. The distinction was meant to be made between actual litigation and overall enforcement work, and investigative work. I believe that the estimate made by the Attorney General's Office of $1,275 of the original $4,460 claimed as investigative work is reasonable. I, therefore, accept the $1,275 as a verified credit.

Regarding the costs claimed by the Town of Epping, the auditor questioned $32,726 and accepted $48,062. The questioned costs consisted of those paid to a law firm to represent the Town of Epping for purposes of support in litigation. Based on the State's reading of the OERR enforcement cost policy, the State in their response to the draft audit report did not dispute this finding. You accepted $48,062 claimed by the Town of Epping for investigatory work, sampling and the provisions of expert testimony. I concur with your findings regarding expenditures associated with the Town of Epping during the credit period.

You questioned the entire $400,000 credit claim made by the Water Supply and Pollution Control Commission/Attorney General for drum removal activities. These activities were conducted by the responsible parties at no cost to the State. The State maintained that CERCLA should provide credit for responsible party cleanup as an incentive to the State to initiate such actions. Neither CERCLA nor current policy support such an incentive, however. This credit claim does not meet the criteria for credit claims under CERCLA section 104(c)(3) nor is it eligible under section 111 of CERCLA. I concur with your findings.

The verified credit for the Keefe Environmental Services site is, therefore, determined to be $67,217.

Attachments

cc: Michael R. Deland, Regional Administrator Region I
Frederick L. Meadows, GAD (PM-216)
Lisa Karpf, OIG, Internal Audits (A-109C)
Don Kraft/Becky Kennedy, OPPM/OERR

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 12 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

**MEMORANDUM**

SUBJECT: Report on Audit of Credit Period Costs Claimed by the New Hampshire Office of the Attorney General for Keefe Environmental Services Site. Audit Report No. E5cH3-01-0047-31231

FROM: Lee M. Thomas
Assistant Administrator

TO: Frederick L. Meadows, Chief
Grant Operations Branch
Grants Administration Division

The State of New Hampshire claimed a credit under section 104(c)(3) of CERCLA of $520,491 for the Keefe Environmental Services site. The claim represented money spent by several New Hampshire government entities and the Office of the Attorney General.

On June 14, 1983, the Inspector General of the Eastern Division issued Audit Report No. E5cH3-01-0047-31231 for the State of New Hampshire's credit claim for this site. In the report, the Inspector General accepted $65,942 and questioned $454,549. I accepted the Inspector General's (IG) findings, plus an additional $1,275 in expenses. The rationale for this decision appears in the attached memoranda.

I have determined that the verified credit for the Keefe Environmental Services site should be $67,217. The existing cooperative agreement contains a special condition allowing the State to use only $50,000 of their claimed credit toward their required 10 percent cost share of the initial remedial measure. The State was to contribute the balance of their cost share as Federal funds were expended. The State, therefore, will have a credit claim balance of $17,217 to use toward their cost share for future phases of work at the site. As the award official for this cooperative agreement, please inform the State of this determination.

The audit report and other memoranda are attached. If you have any questions, please call Sam Morekas at 382-2443.

Attachments

cc: Michael R. Deland, Regional Administrator, Region I
Becky Kennedy/Don Kraft, OPPM/OERR

# APPENDIX D

# PROCEDURES FOR IMPLEMENTING INTERGOVERNMENTAL REVIEW FOR THE SUPERFUND REMEDIAL PROGRAM

## PURPOSE

This appendix has been provided to inform concerned State pollution control agency and EPA staff, especially the State Project Officer (SPO) and the Regional Site Project Officer (RSPO), of detailed procedures for implementing 40 CFR Part 29, EPA's regulation concerning intergovernmental review of Federal financial assistance programs and direct Federal development activities, as it relates to the Superfund remedial program.

## BACKGROUND

On July 14, 1982, the President signed Executive Order 12372, "Intergovernmental Review of Federal Programs." This Order directed the Office of Management and Budget (OMB) to revoke OMB Circular A-95, which had provided that State and areawide clearinghouses evaluate, review, and coordinate proposed Federally-assisted programs and projects, and to instead implement a flexible, elective process which could be developed by each State. EPA, along with other Federal agencies subject to the Executive Order, published its final rule and accompanying notices in the Federal Register on June 24, 1983. This rule is 40 CFR Part 29, "Intergovernmental Review of the Environmental Protection Agency Programs and Activities" and became effective on October 1, 1983.

As the final rule, 40 CFR Part 29 applies to all remedial projects -- including enforcement-lead remedial investigation/feasibility study (RI/FS) projects -- initiated under the authority of CERCLA for which EPA or the State pollution control agency is taking the lead. Responsible parties, however, are not subject to 40 CFR Part 29 and their RI/FS and remedial design/remedial action (RD/RA) activities accordingly are not subject to the notification procedures described in this guidance. Further, enforcement activities other than enforcement-conducted RI/FS projects (e.g., Administrative Orders, negotiations, litigation) also are not subject to intergovernmental review.

The intent of the Executive Order and the supporting regulation is to increase Federal responsiveness to State and local entities and to ensure full consideration of their concerns in decision-making on proposed financial assistance and direct Federal development projects. The State process, which a State may develop under the Executive Order, is the framework within which affected State and local officials may conduct review activities to promote these objectives.*

A State is not obligated to establish a process under the Executive Order. However, if it does choose to do so, the Executive Order poses two requirements that each State review system must meet: 1) the State must consult with local governments when establishing its process, and 2) each State must choose the programs and activities to be included under the process and must provide this information to EPA.

While not required by the rule, the preamble to 40 CFR Part 29 states that a State review process will likely include the following components:

- A designated single point of contact (SPOC) that will generally act as a conduit for transmitting review comments and other relevant information between the State and EPA.
- Delegation of review and comment responsibility to specific State, areawide, regional, or local entities.
- Procedures to coordinate and manage review of and comment on proposed Federal financial assistance or direct Federal development and to aid in reaching a State process recommendation. A State process recommendation is developed by commenting State, areawide, regional, and local officials participating in the State process and transmitted by the SPOC. The recommendation can be a consensus or views may differ; a State process recommendation which represents a consensus can be transmitted through the SPOC.

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* The State process is not the State pollution control agency. To reduce potential confusion, this appendix will, where possible, specify whether the procedures described pertain to the State pollution control agency or to the State review process.

- A means of notifying prospective applicants for Federal assistance of the manner in which applications will be managed under the State process.

In addition, procedures implemented under 40 CFR Part 29 contain requirements which govern EPA's role in intergovernmental review. Salient points are summarized below:

- After official notification to the State process or other review entities, EPA must allow up to 60 days for comment on each proposed State or Federal-lead remedial project before beginning work.* This comment period must be held whether or not a State process is in place. Procedures for initiating and conducting the review of State or Federal-lead projects will differ in each case (see Section 1).

- When the SPOC transmits to EPA a State process recommendation on a Superfund remedial project, EPA must "accommodate or explain." During this phase of review, EPA must either: 1) accept the process recommendation, 2) reach a mutually agreeable solution, or 3) provide the SPOC with a written explanation for not implementing the State process recommendation.

- If there is no State process, an established State process does not cover the Superfund remedial program, or a process recommendation is not relayed through a SPOC, the directly affected governmental entities taking part in review can submit their comments to EPA for consideration, and "accommodate or explain" procedures will not be instituted.

The above procedures apply to all EPA programs and activities which are subject to Executive Order 12372. However, the Agency determined that more specific procedures for initiating the comment period for Superfund projects were needed. Therefore, on December 6, 1983, EPA published in the Federal Register a "Notice of Supplemental Procedures for Establishing Start Dates of Comment Period for Activities Subject to Executive Order 12372" (48 FR 54692). This notice contains detailed instructions for initiating review of proposed State and Federal (including enforcement) lead remedial activities undertaken pursuant to CERCLA.

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* If the proposed project changes substantially at any time after information has been submitted for intergovernmental review, EPA will provide an additional period of up to 60 days for review of the official application.

## APPENDIX SUMMARY

This appendix is organized in three sections, as follows:

- Procedures for implementing intergovernmental review of Superfund programs
- Reprints of 40 CFR Part 29 and 48 FR 54692
- Model notification letters to formally initiate intergovernmental review of a proposed remedial project.

It is designed to provide State pollution control agency and EPA staff with procedures for conducting review, both where a process exists to review the Superfund program and where the State has opted not to develop a process that applies to Superfund. The appendix also supplies additional procedural information that is specific to the Superfund remedial program.

Section 1, below, contains detailed instructions for initiating intergovernmental review and EPA's role in that process. Procedures outlined are drawn from both 40 CFR Part 29 -- general EPA requirements -- and 48 FR 54692, which is specific to CERCLA activities. These documents have been reproduced in Section 2. Section 3 contains two model letters -- to be prepared and sent either by the State pollution control agency or EPA, as the situation warrants -- to formally initiate intergovernmental review of a proposed Superfund remedial action. The letters provided notify an established State process of a proposed RI/FS or RD/RA project.

## 1. PROCEDURES FOR IMPLEMENTING INTERGOVERNMENTAL REVIEW

### A. Where a State Process Exists and Includes the CERCLA Program and Activity in Question

If the State has opted to develop a review process that both covers the CERCLA remedial program and includes a SPOC, responsible staff will use the procedures outlined below during intergovernmental review. These procedures are not intended to govern the manner in which the State process reviews a proposed EPA action; review will be a concern internal to the State. Rather, these steps determine how EPA will interact with a State's intergovernmental review process. Where the State has opted to exclude the CERCLA remedial program from its review process or has not established a SPOC, EPA will secure intergovernmental review for applicable Superfund remedial projects according to the procedures that apply to States which have not developed review processes; these are described in Section 1.B of this appendix.

State processes must be formally notified of a proposed remedial project as soon as possible, but at least one quarter prior to the quarter in which EPA has targeted an obligation. For RI/FS projects, the final Remedial Accomplishments Plan (RAP) can act as the point at which to initiate intergovernmental review; for RD/RA projects, public notification of the feasibility study comment period can serve this purpose. Because EPA will not award Federal assistance for remedial response activities until representatives of the State have had an opportunity to comment on the proposed action, it is vital to initiate the review process well in advance of the expected obligation, thus avoiding unnecessary delays in agreement execution.

Procedures for notifying the State process depend upon whether the proposed project is State or Federal-lead. When the project in question is a State-lead RI/FS, the following procedures must be used:

- The State pollution control agency (usually the SPO) monitors the RAP to ascertain the quarter in which obligation has been projected.

- As soon as possible, but at least one quarter prior to the obligation quarter identified in the RAP, the SPO formally notifies the State process of a proposed RI/FS project by sending a notification letter to the SPOC. This letter must contain the site's name, location, and rank on the

National Priorities List (NPL); a description of the nature of the problem at the site and activities to be implemented under the RI/FS; estimated project costs; expected start and completion dates; and the name of the SPO to contact for additional information (a model letter is provided in Section 3 of this appendix).

- The SPO also sends a copy of the notification letter to the RSPO.

Similar procedures are used for a State-lead RD/RA. However, the SPO must formally notify the State process of the proposed activities at the same time that the public is officially notified of the feasibility study comment period. To initiate the official comment period, the SPO must prepare a transmittal letter and send it to the SPOC along with a copy of the draft feasibility study report (a model letter is provided in Section 3 of this appendix). The State process review and the feasibility study public comment period will proceed concurrently. As for State-lead RI/FS projects, the SPO must also send a copy of the transmittal letter to the RSPO.

When the project in question is a Federal-lead RI/FS, the following procedures must be used:

- The RSPO monitors the RAP to ascertain the quarter in which EPA has projected obligation
- As soon as possible but at least one quarter prior to the obligation quarter identified in the RAP, the RSPO formally notifies the State process of the proposed action by submitting a notification letter to the SPOC. This letter must be signed by the Regional Administrator (RA) (or designee) and be prepared in coordination with the State pollution control agency. Contents of the letter should be similar to those outlined above and to the model provided in Section 3 of this appendix.

Procedures to be followed for a Federal lead RD/RA are similar. The Region must formally notify the State process of the proposed activities at the same time that the public is officially notified of the feasibility study comment period. To initiate the State process review, the RSPO must prepare a transmittal letter for the RA's signature and send it to the SPOC along with a copy of the draft feasibility study report (the same model letter in Section 3 of this appendix can be used for State or

Federal-lead projects). In preparing this letter, the RSPO should coordinate closely with the State pollution control agency. The State process review and the feasibility study public comment period will proceed concurrently.

After being formally notified of either a proposed State or Federal-lead project, the State process has up to 60 days to review and comment on the proposed action. The official comment period begins five days after the notification is sent, to allow for entry into the State process.

If after the official comment period there is no response from the SPOC or the SPOC has transmitted a State process recommendation that does not differ from the action proposed by EPA, the Agency may proceed to obligate funds for the project. If, however, the State process recommendation does not agree with the proposed action, EPA must "accommodate or explain." This means that EPA must do one of the following:

- Accept the State process recommendation
- Reach a mutually agreeable solution
- Provide the SPOC with a written explanation for not implementing the recommendation.

In the latter case, the RSPO must prepare a letter for the RA's signature, informing the SPOC of the reasons for non-accommodation; the Region must send a copy of each non-accommodation to the Chief, Grants Policy and Procedures Branch (PM-216), Environmental Protection Agency, Washington, D.C. 20460, (202) 382-5268. If the situation is controversial, the RSPO must consult with this Branch Chief before taking action. The Regional Superfund Coordinator may also notify the SPOC by telephone of EPA's decision. The State process will then be given an additional 10 days for comment on the proposed action. This 10-day review will begin immediately upon oral communication and explanation of nonaccommodation or, if only written notification has been given, five days after such notification has been sent to the SPOC. If, after the 10-day review period, EPA still wishes to undertake the proposed activity, the Agency will obligate money for the remedial project.

In addition to initiating intergovernmental review, the responsible official -- either the SPO or RSPO -- should include information pertaining to the review in each Cooperative Agreement application (SPO) and Federal-lead agreement package (RSPO). The following materials are appropriate:

- A dated copy of the letter notifying the SPOC of a proposed remedial project

- A copy of the State process recommendation (if any), and the RA's response to the SPOC, if the recommendation differs from EPA's proposed action

- Any other letters commenting on EPA's proposed action, including opinions of reviewers differing from the State process recommendation.

The RSPO is also responsible for summarizing the results of intergovernmental review in the Decision Memorandum which is prepared as part of the concurrence package for each remedial response agreement.

### B. Where a State Process Does Not Exist or Does Not Include the CERCLA Program or Activity Under Consideration

The primary difference between the intergovernmental review procedures implemented where a State process pertains to a CERCLA activity and where one does not is that, in the latter case, EPA and the State pollution control agency are responsible for both identifying and notifying the appropriate governmental entities. These include the State Governor's office, directly affected areawide and regional planning agencies, and officials (usually elected) of directly affected local governments, such as mayors, city councilmen, aldermen, etc.

Intergovernmental review must be initiated as soon as possible, but at least one quarter prior to the quarter slated for project obligation. This is necessary to avoid any unnecessary funding delays. Appearance of an RI/FS on the RAP or public notification of the feasibility study for an RD/RA may be the point at which responsible officials should initiate intergovernmental review.

Procedures for initiating review depend upon whether the proposed project will be State or Federal-lead. When the proposed project is a State-lead RI/FS, the following procedures must be used:

- The State pollution control agency (usually the SPO) monitors the RAP to ascertain the quarter in which EPA has targeted obligation.

- As soon as possible but at least one quarter prior to the obligation quarter identified in the RAP, the SPO formally initiates intergovernmental review by preparing a notification letter containing the same types of information described in Section 1.A, above (a model letter is provided in Section 3 of this appendix). The SPO is responsible for identifying directly affected governmental entities, in consultation with EPA, and for sending them copies of the notification letter to initiate the comment period.

- The SPO also sends a copy of the notification letter to the RSPO.

Similar procedures are used for a State-lead RD/RA. However, the SPO should formally notify directly affected governmental entities of the proposed activities at the same time that the public is officially notified of the feasibility study comment period. To initiate the official comment period, the SPO must prepare a transmittal letter and send it to the directly affected governmental entities along with copies of the draft feasibility study report (a model letter is provided in Section 3 of this appendix). The intergovernmental review and the feasibility study public comment period will proceed concurrently. As in the procedures described above, the SPO should also send a copy of the transmittal letter to the RSPO.

When the proposed project is a Federal-lead RI/FS, the following procedures must be used:

- The RSPO monitors the RAP to ascertain the quarter in which EPA has targeted obligation.

- As soon as possible but at least one quarter prior to the obligation quarter projected in the RAP, the RSPO formally initiates intergovernmental review by submitting a notification letter to directly affected governmental entities. This letter is for signature by the RA, or the RA's designee, and is prepared in coordination with the State pollution control agency. Content of the letter is similar to that described in Section 1.A, above, and to the model letter provided in Section 3 of this appendix. The Region, especially the RSPO, must work closely with State pollution control agency personnel to determine appropriate participants in the review and to ensure that these officials receive formal notification.

Procedures to be followed for a Federal-lead RD/RA are similar. The RSPO should formally notify the directly affected governmental entities of the proposed activities at the same time that the public is notified of the feasibility study comment period. To initiate the official comment period, the RSPO must prepare, in coordination with the State pollution control agency, a transmittal letter. The RSPO must send this letter to directly affected governmental entities under the RA's signature, along with copies of the draft feasibility study; the RSPO should work closely with the State pollution control agency in determining appropriate governmental entities. Intergovernmental review and the feasibility study public comment period will proceed concurrently.

The procedures described above assume that EPA Regional and State pollution control agency personnel will be able to identify areawide and regional planning agencies and officials of directly affected local governments to participate in intergovernmental review. If, however, the situation is particularly complex, appropriate officials may be notified and the comment period initiated by other mechanisms. Possible alternatives may include publication of notices in the Federal Register or a similar State publication, placing an announcement in local newspapers, and/or posting notification in readily accessible locations in affected areas.

Intergovernmental review entities have 60 days from receipt of the notification to review and comment on the proposed Federal action. For purposes of computing the review period, receipt is presumed to have occurred five days after all notifications have been mailed. (Certified mail may be one method to mail notifications.) Directly affected governmental entities must be allowed the full period for this review. Upon completing their review, entities may transmit comments directly to either the SPO or the RSPO, depending upon which official was responsible for initiating the intergovernmental review.

EPA must consider any comments received but is not obligated to "accommodate or explain." Although there is no need to delay obligation in response to comments, it is good practice to respond in writing to any comments raising questions about the project.

In addition to initiating intergovernmental review, the responsible official -- the RSPO or SPO -- should include information pertaining to this process in each Cooperative Agreement application (SPO) and Federal-lead agreement package (RSPO). The following materials are appropriate:

- A dated copy of the letter, Federal Register notice, newspaper announcement, etc., used to notify the directly affected governmental entities of EPA's proposed action; this must show that at least 60 days have elapsed since notification was sent

- Copies of any review comments received.

The RSPO should also summarize results of intergovernmental review, stating when notification was provided to directly affected governmental entities and how the Region considered any comments received, in the Decision Memorandum prepared as part of the concurrence package for all remedial response agreements.

## 2. REPRINT OF 40 CFR 29 AND PROCEDURES FOR ESTABLISHING START DATES OF INTERGOVERNMENTAL REVIEW COMMENT PERIOD ON CERCLA REMEDIAL PROJECTS

demonstration projects). The separate notice in today's **Federal Register** lists all of the EPA programs and activities included in the scope of the Order.

### Conforming Amendments

In the NPRM, we cited other EPA regulations that we expected to amend as part of this final rule. Because the effective date for implementing rules under the Order was extended, we do not need to amend the existing general grant regulation (40 CFR Part 30) and construction grant regulation (40 CFR Part 35—Subparts E and I). EPA is completing new general assistance and construction grant regulations which reflect the new intergovernmental review process. They are expected to be effective by October 1, 1983, as will this final rule.

### Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Environmental Protection Agency has determined that this is not a major rule under Executive Order 12291. The rule will simplify consultation with the Agency and allow state and local governments to establish cost effective consultation procedures. For this reason, the EPA believes that any economic impact the regulation has will be positive. In any event, it is unlikely that its economic impact will be significant. Consequently, the EPA certifies, under the Regulatory Flexibility Act, that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it does not require the collection or retention of information.

**List of Subjects in:**

*40 CFR Part 29*

Intergovernmental relations.

*40 CFR Part 35*

Air pollution control,
Grant programs—environmental protection,
Indians,
Intergovernmental relations,
Pesticides and pests,
Reporting and recordkeeping requirements,
Waste treatment and disposal,
Water pollution control.

*40 CFR Part 40*

Environmental protection,
Grant programs—environmental protection,
Intergovernmental relations,
Reporting and recordkeeping requirements,
Research.

*40 CFR Part 51*

Administrative practice and procedure,
Air pollution control,
Intergovernmental relations,
Reporting and recordkeeping requirements,
Ozone,
Sulfur oxides,
Nitrogen dioxide,
Lead,
Particulate matter,
Hydrocarbon,
Carbon monoxide.

*40 CFR Part 255*

Waste treatment and disposal,
Intergovernmental relations.

Dated: June 17, 1983.

**William D. Ruckelshaus,**
*Administrator.*

1. For the reasons set out in the Preamble, the U.S. Environmental Protection Agency amends Title 40, Code of Federal Regulations, by adding a new Part 29, to read as follows:

## PART 29—INTERGOVERNMENTAL REVIEW OF ENVIRONMENTAL PROTECTION AGENCY PROGRAMS AND ACTIVITIES

Sec.
29.1 What is the purpose of these regulations?
29.2 What definitions apply to these regulations?
29.3 What programs and activities of the Environmental Protection Agency are subject to these regulations?
29.4 What are the Administrator's general responsibilities under the Order?
29.5 What is the Administrator's obligation with respect to federal interagency coordination?
29.6 What procedures apply to the selection of programs and activities under these regulations?
29.7 How does the Administrator communicate with state and local officials concerning EPA programs and activities?
29.8 How does the Administrator provide states an opportunity to comment on proposed federal financial assistance and direct federal development?
29.9 How does the Administrator receive and respond to comments?
29.10 How does the Administrator make efforts to accommodate intergovernmental concerns?
29.11 What are the Administrator's obligations in interstate situations?
29.12 How may a state simplify, consolidate, or substitute federally required state plans?
29.13 May the Administrator waive any provision of these regulations?

**Authority:** Executive Order 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); Sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506); Sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

### § 29.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended, on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, as amended and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state and local processes for state and local government coordination and review of proposed Federal financial assistance and direct Fedeal development.

(c) These regulations are intended to aid the internal management of the Environmental Protection Agency (EPA) and are not intended to create any right or benefit enforceable at law by a party against EPA or its officers.

### § 29.2 What definitions apply to these regulations?

"Administrator" means the Administrator of the U.S. Environmental Protection Agency or an official or employee of the Agency acting for the Administrator under a delegation of authority.

"Agency" means the U.S. Environmental Protection Agency (EPA).

"Order" means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

"States" means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

### § 29.3 What programs and activities of the Environmental Protection Agency are subject to these regulations?

The Administrator publishes in the **Federal Register** a list of the EPA programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

### § 29.4 What are the Administrator's general responsibilities under the Order?

(a) The Administrator provides opportunities for consultation by elected officials of those state and local governments that would provide the non-federal funds for, or that would be directly affected by, proposed federal financial assistance from, or direct federal development by, the EPA.

(b) If a state adopts a process under the Order to review and coordinate proposed federal financial assistance and direct federal development, the Administrator to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed federal financial assistance and direct federal development that are communicated through the state process;

(4) Allows the states to simplify and consolidate existing federally required state plan submissions;

(5) Where state planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of state plans for federally required state plans;

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when proposed federal financial assistance or direct federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports state and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, state or local elected officials.

### § 29.5 What is the Administrator's obligation with respect to federal interagency coordination?

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected federal departments and agencies in an effort to assure full coordination between such agencies and EPA regarding programs and activities covered under these regulations.

### § 29.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the **Federal Register** in accordance with § 29.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Administrator of EPA programs and activities selected for that process.

(c) A state may notify the Administrator of changes in its selections at any time. For each change, the state shall submit an assurance to the Administrator that the state has consulted with local elected officials regarding the change. EPA may establish deadlines by which states are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a state's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

### § 29.7 How does the Administrator communicate with state and local officials concerning the EPA programs and activities?

(a) For those programs and activities covered by a state process under § 29.6, the Administrator, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle asis reasonably feasible to explain specific plans and actions.

(b) The Administrator provides notice of proposed federal financial assistance or direct federal development to directly affected state, areawide, regional, and local entities in a state if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be published in the **Federal Register** or issued by other means which EPA, in its discretion deems appropriate.

### § 29.8 How does the Administrator provide States an opportunity to comment on proposed federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the Administrator gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Administrator to comment on proposed federal fina assistance in the form of noncomp continuation awards; and

(2) At least 60 days from the date established by the Administrator to comment on proposed direct federal development or federal financial assistance, other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Environmental Protection Agency have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60-day opportunity for review and comment.

### § 29.9 How does the Administrator receive and respond to comments?

(a) The Administrator follows the procedures in § 29.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for program selected under § 29.6.

(b) The single point of contact is obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation. However, if a state process recommendation is transmitted by a single point of contact, all comments from state, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, the state, areawide, regional and local officials and entities may submit comments directly either to the applicant or to EPA.

(d) If a program or activity is not selected for a state process, the state, areawide, regional and local officials and entities may submit comments either directly to the applicant or to EPA. In addition, if a state process recommendation for a nonselected program or activity is transmitted to EPA by the single point of contact, the Administrator follows the procedures of § 29.10 of this Part.

(e) The Administrator *considers* comments which do not constitute state process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of § 29.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

**29.10 How does the Administrator make efforts to accommodate intergovernmental concerns?**

(a) If a state process provides a state process recommendation to the Agency through the state's single point of contact, the Administrator either:

(1) Accepts the recommendation;

(2) reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Administrator, in his or her discretion, deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

(1) EPA will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

**§ 29.11 What are the Administrator's obligations in interstate situations?**

(a) The Administrator is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and selected an EPA program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that do not adopt a process under the Order or do not select an EPA program or activity;

(4) Responding in accordance with § 29.10 of this part to a recommendation received from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with EPA were delegated.

(b) The Administrator uses the procedures in § 29.10 if a state process provides a state process recommendation to the Agency through a single point of contact.

**§ 29.12 How may a state simplify, consolidate, or substitute federally required state plans?**

(a) As used in this section:

(1) "Simplify" means that a state may develop its own format, choose its own submission date, and select the planning period for a state plan.

(2) "Consolidate" means that a state may meet statutory and regulatory requirements by combining two or more plans into one document and that the state can select the format, submission date, and planning period for the consolidated plan.

(3) "Substitute" means that a state may use a plan or other document that it has developed for its own purposes to meet federal requirements.

(b) If not inconsistent with law, a state may decide to try to simplify, consolidate, or substitute federally required state plans without prior approval by the Administrator.

(c) The Administrator reviews each state plan that a state has simplified, consolidated, or substituted and accepts the plan only if its contents meet federal requirements.

**§ 29.13 May the Administrator waive any provision of these regulations?**

In an emergency, the Administrator may waive any provision of these regulations.

2. For the reasons set forth in the preamble, 40 CFR Parts 35, 40, 51, and 255 are amended as follows:

## PART 35—[AMENDED]

Section 35.1620–6 is revised in its entirety to read as follows:

**§ 35.1620–6 Intergovernmental review.**

EPA will not award funds under this subpart without review and consultation in accordance with the requirements of Executive Order 12372, as implemented in 40 CFR Part 29 of this chapter.

## PART 40—[AMENDED]

Section 40.135–1 is amended by removing § 40.135–1(b) and redesignating § 40.135–1(c) as § 40.135–1(b); by amending § 40.135–2 to add a new paragraph (e) to read as follows:

**§ 40.135–2 Application requirements.**

* * * * *

(e) *Intergovernmental review.* EPA will not award funds under this subpart without review and consultation, if applicable, in accordance with the requirements of Executive Order 12372, as implemented in 40 CFR Part 29 of this chapter.

## PART 51—[AMENDED]

**§ 51.241 [Amended]**

Section 51.241(c) is amended by removing the last sentence, "Attention is directed to Part IV of the Office of Management and Budget Circular A–95 (41 FR 2050) which encourages the designation of established, substate comprehensive planning agencies as the agencies to carry out Federally assisted or required areawide planning."

**§ 51.248 [Amended]**

Section 51.248(b) is amended by removing the last sentence, "The provisions of items 3a through d, Part IV of the Office of Management and Budget Circular A–95 shall be considered in the preparation of memoranda of understanding."

Section 51.251 is revised in its entirety to read as follows:

**§ 51.251 Conformity with Executive Order 12372.**

The organization responsible for developing the state implementation plan revision shall submit a draft of any major implementation plan revision including any of the six elements listed in § 51.244 to the state process, if one has been designated by the state under Executive Order 12372, "Intergovernmental Review of Federal Programs" (47 FR 30959, July 16, 1982) as amended April 8, 1983 (48 FR 15587, April 11, 1983) for review and comment for a period of 60 days. The draft plan or portions thereof, shall be submitted to the state process either prior to or concurrent with announcement of public hearings on the plan. Comments received from the state process within that 60-day period shall be considered. The organization initiating the plan revision shall retain copies of these comments for inspection by the Administrator and the public.

**§ 51.252 [Amended]**

Section 51.252(b) is amended by removing the words "in the A–95 clearing house" and adding, in their place, "from the state process designated under Executive Order 12372".

## PART 255—[AMENDED]

**§ 255.2 [Amended]**

Section 255.2 is amended by removing the words "OMB Circular A–95 Part IV of Attachment A" and adding in their place, "40 CFR Part 29 of this chapter".

**§ 255.20 [Amended]**

Section 255.20 is amended by removing the words "the chief executives of all agencies designated pursuant to OMB Circular No. A–95, and with" and adding in their place, "regional and areawide planning agencies,".

**§ 255.23 [Amended]**

Section 255.23(a) is amended to remove the words, "A–95 clearinghouses" and adding, in their place, "agencies and the state process under Executive Order 12372".

[FR Doc. 83–17025 Filed 6–23–83; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

[OA-FRL-2380-2(b)]

### Programs and Activities Eligible for Intergovernmental Review Under 40 CFR Part 29 and Subject to Section 204 of the Demonstration Cities and Metropolitan Development Act

The Environmental Protection Agency (EPA) is publishing this list of programs and activities in conjunction with its final rule appearing elsewhere in today's **Federal Register**, 40 CFR Part 29, "Intergovernmental Review of Environmental Protection Agency Programs and Activities." This list identifies EPA's financial assistance programs and direct development activities which states may select for intergovernmental review under a process established in accordance with Executive Order 12372. Programs subject to the requirements of Section 204 of the Demonstration Cities and Metropolitan Development Act are designated with an asterisk (*).

The effective date for all regulations implementing the Order is September 30, 1983. Because this is the last day of the Federal Fiscal Year, the Administrator determined that it is neither feasible nor practicable for EPA to apply its new regulation to any of the awards that the Agency makes on that date. Therefore, EPA will implement 40 CFR Part 29 procedures beginning October 1, 1983, for programs and activities that states select from the following list.

**Financial Assistance Programs**

1. *State and Local Assistance Programs.*

| CFDA NO. | Title |
|---|---|
| *66.001 | Air Pollution Control Program. |
| *66.418 | Construction Grants for Wastewater Treatment Works. |
| *66.419 | Water Pollution Control—State and Interstate Program Grants. |
| *66.454 | Water Quality Management Planning. |
| *66.432 | State Public Water System Supervision—Program Grants. |
| *66.433 | State Underground Water Source Protection—Program Grants. |
| *66.438 | Construction Management Assistance. |
| *66.451 | Hazardous Waste Management Financial Assistance to States. |
| (*) | State Inventories of Uncontrolled Hazardous Waste Sites. |
| *66.600 | Environmental Protection Consolidated Grants—Program Support. |
| *66.603 | Loan Guarantees for Construction of Treatment Works. |
| *66.700 | Pesticides Enforcement Program Grants. |
| *66.802 | Superfund Cooperative Agreements (Remedial Clean Ups). |

2. *Research, Development, and Demonstration Projects.* (Selection is limited to proposals which (a) require an Environmental Impact Statement (EIS); or (b) do not require an EIS but will be newly initiated at a particular site and require unusual measures to limit the possibility of adverse exposure or hazard to the general public; or (c) have a unique geographic focus and are directly relevant to the governmental responsibilities of a state or local government within that geographic area.)

| CFDA NO. | Title |
|---|---|
| 66.500 | Environmental Protection—Consolidated Research Grants. |
| 66.501 | Air Pollution Control Research Grants. |
| 66.502 | Pesticides Control Research Grants. |
| 66.504 | Solid Waste Disposal Research Grants. |
| *66.505 | Water Pollution Control—Research, Development, and Demonstration Grants. |
| *66.506 | Safe Drinking Water Research and Demonstration Grants. |
| 66.507 | Toxic Substances Research Grants. |

**Direct Development Activities**

*1. Real Property Acquisition or Disposition, Including Obtaining Major Leases or Easements.

*2. Construction of New EPA Facilities.

*3. EPA Issued Plans and Permits Which Do Not Impact Interstate Areas.

Dated: June 17, 1983.

**William D. Ruckelshaus,**

*Administrator.*

[FR Doc. 83-17026 Filed 6-23-83; 8:45 am]

BILLING CODE 6560-50-M

(D) Docket Nos. ER84-9-000 and ER84-10-000 are hereby consolidated for purposes of hearing and decision.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in section 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

**Kenneth F. Plumb,**

*Secretary.*

## Attachment

PHILADELPHIA ELECTRIC COMPANY, DOCKET NOS. ER84-9-000 AND ER84-10-000

Rate Schedule Designations

| Designation | Other party |
|---|---|
| (1) Philadelphia Electric Company, Supplement No. 11 to Rate Schedule FPC No. 38 (Supersedes Supplement No. 10). | Conowingo Power Company, Susquehanna Electric Company. |
| (2) Supplement No. 10 to Rate Schedule FPC No. 44 (Supersedes Supplement No. 9). | Borough of Lansdale. |
| (3) Susquehanna Electric Company, Supplement No. 11 to Rate Schedule FPC No. 2 (Supersedes Supplement No. 10) (Concurs in (1) above). | Conowingo Power Company, Philadelphia Electric Company (Certificate of Concurrence). |

[FR Doc. 83-32383 Filed 12-5-83; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP84-26-000]**

## Sabine Pipe Line Co.; Proposed Change in FERC Gas Tariff

November 30, 1983.

Take notice that on November 25, 1983, Sabine Pipe Line Company (Sabine) tendered for filing proposed changes in its FERC Gas Tariff, Volume No. 1. The proposed changes provide for adoption of an initial Rate Schedule T-3 for general transportation services to be performed including transportation services authorized pursuant to subpart F of Section 157 of the Commission's Regulations. Sabine further requests waiver of the Commission's notice requirements to permit the proposed changes to become effective on December 1, 1983.

Copies of the filing are being served upon the company's jurisdictional customers and the Commissioner of Conservation for the State of Louisiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before December 12, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 83-32384 Filed 12-5-83; 8:45 am]

BILLING CODE 6717-01-M

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## ENVIRONMENTAL PROTECTION AGENCY

[SWH-FRL 2482-7]

## Supplemental Procedures for Establishing Start Dates of Comment Period for Activities Subject to Executive Order 12372

On September 29, 1983 (48 FR 44643), EPA published a notice of procedures to establish start dates for comment periods under Executive Order 12372 and 40 CFR Part 29 (Intergovernmental Review). The Executive Order and regulation require EPA to notify a State process or directly affected governmental entities of activities proposed for Federal funding in their jurisdictions. (A State process is the framework under which State and loc officials carry out Intergovernmental Review activities under the Executive Order; see 48 FR 29288 for other definitions and background.) The notice must establish the start date for a 60-day official comment period and identify an EPA contact for additional information.

The EPA has determined that the documents to be reviewed under the intergovernmental review process for activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), will differ from those reviewed for other EPA programs. The Hazardous Substance Response Trust Fund (CFDA No. 66.802) is the CERCLA program subject to Executive Order 12372. The major components of this program are the remedial investigation/feasibility study, which constitute the first phase, and remedial design/remedial action, which constitute the second phase. This notice explains the procedures to be followed for the CERCLA programs.

### Procedures

*I. Transition From A-95 Review Syste To E.O. 12372 System*

Any proposed funding on which A-95 review was initiated prior to October 1, 1983, will continue under that process.

*II. Where a State Process Exists and Incudes the Cercla Program or Activity Under Consideration*

*A. Remedial Investigation/Feasibility Study (RI/FS).* The 60-day comment period on the proposed funding for a RI/FS will begin 5 days after the date that the appropriate State pollution control agency or EPA Regional Office sends a letter to the State process explaining the proposed action. The letter will give the name and location of the site, the site's rank on the National Priorities List, the nature of the problem at the site, a description of the activities to be undertaken under the RI/FS, the estimated cost of the RI/FS, the date on which the proposed RI/FS would begin, an estimate of when the RI/FS is expected to be completed, and the State and/or EPA Project Officers to be contacted for additional information. If, in this or any of the following sections, the official application involves any substantial change from the information provided for intergovernmental review then EPA will provide another 60-da comment period for intergovernmenta review of the official application. When the State has lead responsibility for the

RI/FS, the appropriate State pollution control agency will send the letter to the State process and to the appropriate EPA Regional Office (see 48 FR 44643, September 29, 1983). When EPA has lead responsibility for the RI/FS, the EPA Regional Office will coordinate with the appropriate State pollution control agency and will send the letter to the State process.

*B. Remedial Design/Remedial Action (RD/RA).* The 60-day comment period on the proposed funding for a RD/RA will begin 5 days after the date the appropriate State pollution control agency or EPA Regional Office sends the feasibility study containing the proposed remedy to the State process. The 60-day comment period for the State process generally will run concurrently with the public's comment period on the feasibility study and the proposed remedy. As in the case of RI/FS, when the state has the lead responsibility for the RD/RA, the State pollution control agency will send the document to the State process and will send a copy of the transmittal letter to EPA. When EPA has the lead responsibility for the RD/RA, the EPA Regional Office will coordinate with the appropriate State pollution control agency and will send the document to the State process.

*III. Where a State Process Does Not Exist or Does Not Include the EPA Program or Activity Under Consideration*

A. *Remedial Investigation/Feasibility Study.* The 60-day comment period on the proposed funding for a RI/FS will begin 5 days after the date that the appropriate State pollution control agency or EPA Regional Office sends a letter to officials of directly affected governmental entities (i.e., the Governor of the State, officials of directly affected areawide and Regional planning agencies and officials of directly affected local governments). The letter will contain the same information listed in Section II.A. above. When the state has the lead responsibility for the RI/FS, the appropriate State Pollution control agency will send the letter to the governmental entities and will send a copy to the appropriate EPA Regional Office. When EPA has the lead responsibility for the RI/FS, the EPA Regional Office will coordinate with the State pollution control agency and will send the letter to the directly affected governmental entities.

B. Remedial Design/Remedial Action (RD/RA). The 60-day comment period on the proposed funding for a RD/RA will begin 5 days after the date that the appropriate State pollution control agency or EPA Regional Office sends the feasibility study containing the proposed remedy to the directly affected governmental entities (see III.A.). The 60-day comment period generally will run concurrently with the public's comment period on the feasibility study and the proposed remedy. As in the Case of the RI/FS, when the state has the lead responsibility for the RD/RA, the State pollution control agency will send the feasibility study to the governmental entities and will send a copy of the transmittal letter to EPA. When EPA has the lead responsibility for the RD/RA, EPA will coordinate with the State pollution control agency and will send the document to the governmental entities.

**FOR FURTHER INFORMATION CONTACT:** For further information on these procedures, contact Cristina N. Griffin, Office of Emergency and Remedial Response, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The telephone number is: (202) 382-2443.

Dated: November 29, 1983.

**Lee M. Thomas,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

EPA SUPERFUND PROCEDURES FOR INITIATING COMMENT PERIOD

| | State lead responsibility | EPA lead responsibility |
|---|---|---|
| State process exists and activity covered: | | |
| RI/FS | State pollution control agency (SPCA) sends notification letter to State process. State sends copy of letter to EPA and 60-day comment period begins 5 days after the State sends the letter. | EPA Regional Office sends notification letter to State process and 60-day comment period begins 5 days after EPA sends the letter. |
| RD/RA | SPCA sends the feasibility study containing the proposed remedy to the State process. SPCA sends copy of transmittal notice to EPA and 60-day comment period begins 5 days after the State sends the feasibility study. | EPA Regional Office sends the feasibility study containing the proposed remedy to the State process and 60-day comment period begins 5 days after EPA sends the feasibility study. |
| No State process or activity is not covered: | | |
| RI/FS | SPCA sends notification letter to the "governmental entities" (see III-A). SPCA sends copy of letter to EPA and 60-day comment period begins 5 days after the state sends the letter. | EPA Regional Office consults with SPCA and sends notification letter to the "governmental entities" and 60-day comment period begins 5 days after EPA sends the letter. |
| RD/RA | SPCA sends the feasibility study containing the proposed remedy to the "governmental entities". SPCA sends copy of transmittal notice to EPA and 60-day comment period begins 5 days after the state sends the feasibility study. | EPA Regional Office consults with SPCA and sends the feasibility study containing the proposed remedy to the "governmental entities" and 60-day comment period begins 5 days after EPA sends the feasibility study. |

[FR Doc. 83-32437 Filed 12-5-83; 8:45 am]

BILLING CODE 6560-50-M

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## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## Agency Report Forms Under OMB Review

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Requests for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

**DATE:** Comments must be received on or before January 20, 1984. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

**ADDRESS:** Copies of the proposed report form, the request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer. Comments on the item listed should be submitted to the Agency Liaison Officer and the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*EEOC Agency Liaison Officer:* Gary G. Papritz, Administrative Management Services, Room 281, 2401 E Street, NW., Washington, D.C. 20507; Telephone (202) 634-6990.

*OMB REVIEWER:* Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Telephone (202) 395-6880.

Reproduced from best available copy.

## 3. MODEL LETTER TO INITIATE INTERGOVERNMENTAL REVIEW FOR A REMEDIAL INVESTIGATION/FEASIBILITY STUDY PROJECT

[This letter can be revised, as necessary, for use when notifying directly affected governmental entities where a State process does not cover the activity under consideration.]

(To Designated Single Point of Contact for State Process)

This letter notifies you of a proposed Superfund project to be funded by the U.S. Environmental Protection Agency. This project is subject to the State intergovernmental review process. The 60-day comment period on this proposed action will begin five days after the date this letter is sent. Please address any comments on the proposed action to ________________. The project is outlined below.

1. Site Name: (give name as listed on the National Priorities List)

2. Location of Site: (city and/or county)

3. Site Rank: This site is ranked in Group _____ of the National Priorities List (40 CFR Part 300, Appendix B) established by the U.S. Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (P.L. 96-510).

4. Nature of the Problem: (may use "Conditions at Listing" section of NPL Hazardous Waste Site Descriptions or a similar short description)

5. Description of Proposed Activities: This project will consist of a remedial investigation and a feasibility study meeting the requirements of section 300.68 of the National Oil and Hazardous Substances Contingency Plan (40 CFR Part 300). The project will include definition of the nature and extent of the problem at the site, characterization of the hazardous wastes present, a hydrogeological investigation, a soils and sediments investigation, a surface water investigation, an air investigation, the development of remedial response objectives, the identification of remedial action alternatives, evaluation of the alternatives, an environmental assessment of the alternatives, cost analyses, recommendation of a cost-effective remedial alternative, and conceptual design of the proposed alternative. (Vary the description as appropriate for the site).

6. Community Relations Activities: Community relations activities will be conducted as part of this project to inform and receive input from public officials and the affected community. These will include preparing a community relations plan, holding public meetings, organizing press conferences and workshops, distributing press releases, speaking to concerned citizens' groups, preparing fact sheets, and establishing a community relations repository. (Vary the description as appropriate for the site.)

7. Estimated Cost" $_______, to be 100 percent funded by the U.S. EPA. (For publicly-owned sites, this section should also explain that the required State 50 percent cost share must be provided at the time remedial action is implemented at the site.)

8. Projected Start Date: ____________________________

9. Projected Completion Date: _______________________

10. State Project Officer: (Name, address, telephone number)

11. EPA Project Officer: (Name, address, telephone number)

As I have indicated above, you will have 60 days after receipt of this letter to submit your comments. However, I would very much appreciate hearing from you at the earliest possible time so that we can proceed with the project work without any delays. (Name, telephone number) of my staff is available to assist you in any way during your review.

Sincerely yours,

________________________

# MODEL LETTER TO ACCOMPANY DRAFT FEASIBILITY STUDY WHEN INITIATING INTERGOVERNMENTAL REVIEW FOR REMEDIAL DESIGN/ REMEDIAL ACTION PROJECTS

[This letter can be revised, as necessary]

(To Designated Single Point of Contact for State Process)

On _______________, we notified you that a Superfund project to be funded by the U.S. Environmental Protection Agency was being proposed for the _______________ site in _______________. The first phase of that project, the remedial investigation/feasibility study, has now been completed.

For your review and comment, we have attached a copy of the draft feasibility study, which explains the various alternatives available and the proposed solution for the problem. This is the review document for the second phase of the project, which also is subject to the State intergovernmental review process. The 60-day comment period on the proposed action will begin five days after the date this letter is sent. Please address comments or the State process recommendation to _______________.

Please note that as a result of negotiations or litigation, private parties may undertake the second phase of the project at this site. Since criminal and civil enforcement actions are exempt from intergovernmental review, any changes made as a result of negotiation or litigation with responsible parties will not be subject to the 60-day comment period for intergovernmental review or the other provisions of Executive Order 12372. However, there will continue to be a comment period of three weeks for the public and State and local officials. In addition, all enforcement activities will be subject to EPA's requirements for community relations.

As I have indicated above, you will have 60 days after receipt of this letter to submit your comments. However, I would very much appreciate hearing from you at the earliest possible time so that we can proceed with the project work without any delays. If you have any specific questions on this project, please contact the EPA Project Officer (name, address, telephone number) or the State Project Officer (name, address, telephone number).

Sincerely yours,

Attachment _______________

# APPENDIX E

## MODEL STATEMENT OF WORK FOR A STATE-LEAD REMEDIAL INVESTIGATION/FEASIBILITY STUDY PROJECT

### PURPOSE

This appendix has been provided to assist Regional Site Project Officers (RSPOs) and State Project Officers (SPOs) in developing a statement of work (SOW) for State-lead remedial investigation/feasibility study projects. The model SOW included here may be most useful at sites where a Remedial Action Master Plan (RAMP) has not been completed prior to development of the agreement between EPA and the State.

### BACKGROUND

A SOW describes remedial activities, subactivities, and tasks -- three of the standard organizational units used by EPA to track remedial responses conducted under CERCLA -- to be carried out under the terms of a Cooperative Agreement or EPA-lead remedial response agreement. The SOW provided in this appendix defines tasks required to complete a remedial investigation/feasibility study, a remedial planning subactivity usually undertaken as the first phase of remedial response at a site. This model SOW has been developed because the basic requirements for a remedial investigation/feasibility study project are fairly standard for most sites. Since remedial design and remedial implementation requirements usually vary more widely, depending upon the characteristics of each site, SOWs for those subactivities cannot be standardized in this manner.

Development of a SOW for remedial activities, subactivities, and tasks occurs as one step in the preparation of a Cooperative Agreement application or an EPA-lead remedial response agreement. When remedial planning will be done under an EPA-lead agreement, the SOW will normally be prepared by the Remedial Planning/Field Investigation Team (REM/FIT) contractor prior to the initiation of the remedial investigation. The model SOW presented in this appendix can be used as a guide in developing a site-specific SOW for a Cooperative Agreement application. If a RAMP has been developed for a site, the SOW can be taken directly from the RAMP.

## APPENDIX SUMMARY

This appendix contains an EPA-approved model SOW for a remedial investigation/feasibility study which is usually the first remedial subactivity initiated at a site. It can be used by States, with appropriate modifications, in preparing SOWs to be included in their Cooperative Agreement application packages. Also included is a two-page addendum which modifies the model SOW. It has been appended to the model SOW and is referenced in the model SOW tasks, when they are affected by the changes it contains.

The model SOW reproduced here was issued prior to the current community relations policy (May 1983) and the interim version of the Superfund Community Relations Handbook (September 1983). For current guidance on the community relations aspects of a remedial investigation/feasibility study subactivity, see Section III.D.1 of the text.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 1 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

**MEMORANDUM**

SUBJECT: Model Statement of Work for Remedial Investigations and Feasibility Studies

FROM: William N. Hedeman, Jr., Director Bill Hedeman
Office of Emergency and Remedial Response (WH-548)

TO: Superfund Coordinators
Regions I-X

The attached Model Statement of Work (SOW) has been developed for use in initiating remedial investigations and feasibility studies (RI/FS). It was sent to you previously in draft form for comments. Comments were received from several regions and were helpful in preparing the final version. The majority of comments were on the community relations task, and as a result this section has been rewritten.

This guidance is recommended for use in preparing site specific statements of work for RI/FS projects. The model can be used in preparing the SOW in Remedial Action Master Plans (RAMPs.) It should also be encouraged for use in preparing cooperative agreement applications (refer to draft revised guidance for Remedial Cooperative Agreements and Contracts with States, January 1983.) The level of detail and technical content may vary depending on the specific site conditions; however, the format established by the task descriptions should be used for all cooperative agreements. The SOW also should be used for State Superfund contracts; the site specific SOW can be less detailed than when used with cooperative agreements. It is not necessary to revise cooperative agreements or State Superfund contracts under preparation. However, the model SOW format should be incorporated, if appropriate.

Contact Brint Bixler at 382-2343 for additional information.

Enclosure

# REMEDIAL INVESTIGATION
# MODEL STATEMENT OF WORK

## PURPOSE:

The purpose of this remedial investigation is to determine the nature and extent of the problem at the site and gather all necessary data to support the feasibility study. The Engineer shall furnish all personnel, materials, and services necessary for or incidental to performing the remedial investigation at [specific site], an uncontrolled hazardous waste site.

## SCOPE:

The remedial investigation consists of eight tasks:

Task 1 -- Description of Current Situation

Task 2 -- Investigation Support

Task 3 -- Site Investigations

Task 4 -- Preliminary Remedial Technologies

Task 5 -- Site Investigations Analysis

Task 6 -- Final Report

Task 7 -- Community Relations

Task 8 -- Additional Requirements

A detailed work plan, including technical approach, budget, personnel requirements, and schedule shall be submitted by the Engineer for the proposed remedial investigation.

## REMEDIAL INVESTIGATION
## MODEL WORK PLAN SCHEDULE

| | Activity * | Output | Target Completion Date | Estimated Cost | Personnel Work Hours | Actual Completion Date |
|---|---|---|---|---|---|---|
| 1. | Description of Current Situation | Draft Final Report Section | | | | |
| 1a. | Site Background | | | | | |
| 1b. | Nature and Extent of Problem | | | | | |
| 1c. | History of Response Actions | | | | | |
| 2. | Investigation Support | Draft Final Report Section | | | | |
| 2a. | Contractor Procurement | RFP (or IFB) | | | | |
| 2b. | Site Visit | | | | | |
| 2c. | Define Boundary Conditions | | | | | |
| 2d. | Site Map | Map | | | | |
| 2e. | Site Office | | | | | |
| 3. | Site Investigations | Investigations, Draft Final Report Section | | | | |
| 3a. | Waste Characterization | | | | | |
| 3b. | Hydrogeologic Investigation | | | | | |
| 3c. | Soils and Sediments Investigation | | | | | |
| 3d. | Surface Water Investigation | | | | | |
| 3e. | Air Investigation | | | | | |
| 4. | Preliminary Remedial Technologies | Draft Final Report Section | | | | |
| 4a. | Pre-Investigation Evaluation | | | | | |
| 4b. | Post-Investigation Evaluation | | | | | |
| 5. | Site Investigations Analysis | Draft Final Report | | | | |
| 5a. | Data Analysis | | | | | |
| 5b. | Application to Preliminary Technologies | | | | | |
| 6. | Final Report | Final Report | | | | |
| 7. | Community Relations | | | | | |
| 8. | Additional Requirements | | | | | |

* Under standard EPA terminology, these should be referred to as Tasks.

## TASK 1 -- DESCRIPTION OF CURRENT SITUATION

The Engineer shall describe the background information pertinent to the site and its problems and outline the purpose and need for remedial investigation at the site. The data gathered during any previous investigations or inspections and other relevant data should be used. [Information from the Remedial Action Master Plan may be substituted for this task, if available.]

a. Site Background. Prepare a summary of the regional location, pertinent area boundary features, and general site physiography, hydrology, and geology. The total area of the site and the general nature of the problem, including pertinent history relative to the use of site for hazardous waste disposal, should be defined.

b. Nature and Extent of Problem. Prepare a summary of the actual and potential on-site and off-site health and environmental effects. This may include, but is not limited to, the type, physical states, and amounts of the hazardous substances, the existence and conditions of drums, landfills, and lagoons [substitute site-specific features if different], affected media and pathways of exposure, contaminated releases such as leachate or runoffs, and any human exposure. Emphasis should be placed on describing the threat or potential threat to public health. *

c. History of Response Actions. Prepare a summary of any previous response actions conducted by either local, State, Federal or private parties, including the site inspection, other technical reports, and their results. This summary should address any enforcement activities undertaken to identify responsible parties, compel private cleanup, and recover costs. A list of reference documents and their location shall be included. The scope of the RI/FS should be developed to address the problems and questions that have resulted from the previous work at the site.

## TASK 2 -- INVESTIGATION SUPPORT

The Engineer shall conduct preliminary work necessary to conduct the site investigations and feasibility study.

a. Contractor Procurement. [Include when SOW is used in cooperative agreement.] Prepare contractor procurement documents and award sub-agreement to secure the services necessary to conduct the remedial investigation and feasibility study.

---

*See page E-24 for additional information.

b. Site Visit. Conduct initial site visits required to become familiar with site topography, access routes, and proximity of receptors to possible contamination, and collect data for preparation of the site safety plan. The visit should be used to verify the site information developed in Task 1.

c. Define Boundary Conditions. Establish site boundary conditions to limit the area of site investigations. The boundary conditions should be set so that subsequent investigations will cover the contaminated media in sufficient detail to support following activities (e.g., the feasibility study). The boundary conditions may also be used to identify boundaries for site access control and site security. [If not in existence, a fence or other security measures may be installed as an initial remedial measure.]

d. Site Map. Prepare a site map showing all wetlands, water features, drainage patterns, tanks, buildings, utilities, paved areas, easements, right-of-ways, and other features. The site map and all topographic surveys shall be of sufficient detail and accuracy to locate and report all existing and future work performed at the site. [Permanent baseline monument, bench marks, and reference grid tied into any existing reference system (i.e., State or USGS) should be considered as an option.]

e. Site Office. If agreed to by EPA and the State, establish a temporary site office to support site work.

## TASK 3 -- SITE INVESTIGATIONS

The Engineer shall conduct only those site remedial investigations necessary to characterize the site and its actual or potential hazard to public health and the environment. The site investigations should also result in data of adequate technical content to assess preliminary remedial alternatives developed in Task 4 and support the detailed evaluation of alternatives during the feasibility study. [The following categories of investigations are of necessity described in general terms for use as a model. The site specific SOW will generally expand upon the type of investigation that is appropriate for the site, and focus specifically on source control or off-site actions or a combination of each.]

All sample analyses will be conducted at laboratories following EPA protocols, or equivalents. Strict chain-of-custody procedures will be followed and all samples will be located on the site map [and grid system] established under Task 2.

a. Waste Characterization. Develop and conduct a complete sampling and analysis program to characterize all materials of interest at the site. These materials could include wastes stored above or below ground in tanks, drums, lagoons, piles or other methods of storage. A sampling plan will be developed showing the locations, quantity, frequency, numbering, and constituents for analysis for each sample. The following parameters are considered the minimum for analysis based on previous site information: [provide site-specific list of parameters for analysis].

The sampling plan shall describe the sampling and analysis techniques appropriate to the site conditions. These techniques may include tank and drum opening, sample packing and shipping, and sample preservation. The number or frequency of sampling to obtain representative data should also be discussed. Elements of the safety plan and the QA/QC plan described in the "Additional Requirements" section will also apply to sampling.

The sampling plan should discuss potential incompatability of wastes. Wastes should be analyzed and grouped in compatability classes. This analysis should support any subsequent conclusions about segregating wastes on-site and developing preliminary remedial alternatives.

b. Hydrogeologic Investigation [generally limited to investigations for off-site measures]. Develop and conduct a program to determine the present and potential extent of ground water contamination [and to evaluate the suitability of the site for on-site waste containment]. [Identify specific aquifer to be studied.] Efforts should begin with a survey of previous hydrogeologic studies and other existing data. The survey should address the degree of hazard, the mobility of pollutants considered (from Waste Characterization), the soils' attenuation capacity and mechanisms, discharge/recharge areas, regional flow direction and quality, and effects of any pumping alternatives described in Task 4. Such information may be available from the USGS, the Soil Conservation Service, and local well drillers. Subsequent to the survey of existing data, a sampling program should be developed to determine the horizontal and vertical distribution of contaminants and predict the long-term disposition of contaminants. The sampling program should, at a minimum, evaluate factors affecting ground water performance, background levels of contamination, the type of well construction utilized (must be compatible with type of measurement taken), the number and location of wells, chain of custody and record of samples, and the ground water sampling method. Geophysical techniques should be considered for use in defining subsurface conditions and design of the sampling program.

c. Soils and Sediments Investigation. Develop and conduct a program to determine the location and extent of contamination of surface and subsurface soils and sediments [identify specific areas to be studied]. This process may overlap with certain aspects of the hydrogeologic study (e.g., characteristics of soil strata are relevant to both the transport of contaminants by ground water and to the location of contaminants in the soil; cores from ground water-monitoring wells may serve as soil samples). A survey of existing data on soils and sediments may be useful. A sampling program should be developed and conducted to determine the horizontal and vertical extent of contaminated soils and sediments. Information regarding local background levels, degree of hazard, location of samples, techniques utilized, and methods of analysis should be included. The investigation should identify the locations and probable quantities of subsurface wastes, such as buried drums, through the use of appropriate geophysical methods.

d. Surface Water Investigation. Develop and conduct a program to determine the extent of contamination of surface water [identify specific water bodies]. This process may overlap with the soils and sediments investigation; data from stream or lake sediments sampled may be relevant to surface water quality. A survey of existing data on surface water flow quantity and quality may be a useful first step. A sampling program should be developed and conducted, discussing the degree of hazard, including information on local background levels, location and frequency of samples, sampling techniques, and method of analysis.

e. Air Investigation. Develop and conduct a program to determine the extent of atmospheric contamination. The program should address the tendency of substances (identified through Waste Characterization) to enter the atmosphere, local wind patterns, and the degree of hazard. A sampling program should be developed and conducted, specifying location, timing, and frequency of samples, sampling techniques, and method of analysis.

[Note: Other categories of investigations may be needed for specialized site problems. These could include biological and radiological investigations.]

## TASK 4--PRELIMINARY REMEDIAL TECHNOLOGIES

The Engineer will identify preliminary remedial technologies, providing detail sufficient to ensure that site investigations will develop a data base adequate for the evaluation of alternatives during the feasibility study.

a. Pre-Investigation Action. Prior to starting any site investigations, the Engineer will assess the site conditions to determine potential categories of source control [and/or off-site] remedial actions. Examples of questions to be answered are:

1. Source Control Action

   i. What containment techniques appear feasible to prevent contamination of ground water?

   ii. Does incineration or reclamation appear to be a viable option?

   iii. Does on-site treatment appear to be a viable option, and if so, what category of treatment should be investigated (e.g., biological, physical, chemical, thermal)?

   iv. Will substances migrate or continue to migrate off-site if no action is taken? If only source control measures are taken?

2. Off-Site Action

   i. Does the apparent volume of contaminated ground water make investigation or treatment impracticable?

   ii. What technologies are available to treat the identified contaminants at the site?

   iii. What technologies exist to effectively remove off-site contaminated materials (e.g., river bottom sediments)?

iv. Will the off-site contamination continue to pose a threat if no action is taken?

The State and EPA will review and screen the preliminary technologies so that the site investigations can be designed to answer these types of questions and support the feasibility study.

b. Post-Investigation Evaluation. Either during or following the site investigations the Engineer will assess the investigation results and recommend preliminary remedial technologies likely to apply to the site problem. These technologies should be a refinement of the options considered in Task 4a. They will provide the basis for developing detailed alternatives and the cost-effectiveness analysis during the feasibility study. The work during the remedial investigation will generally be limited to the following:

1. Recommending types of remedial technologies appropriate to the site conditions.

2. Recommending whether or not to remove some or all of the waste for off-site treatment, storage, or disposal.

3. Determining the compatability of groups of wastes with other wastes and with materials considered as part of potential remedial action (e.g., slurry walls, lagoon liners). Recommending alternatives for treatment, storage, or disposal for each category of compatible waste.

## TASK 5 -- SITE INVESTIGATIONS ANALYSIS

The Engineer shall prepare a thorough analysis and summary of all site investigations and their results. The objective of this task will be to ensure that the investigation data are sufficient in quality and quantity to support the feasibility study.

The results and data from all site investigations must be organized and presented logically so that the relationships between site investigations for each medium are apparent.

a. Data Analysis and Exposure Assessment. See page E-24 for revised task description.

b. Application to Preliminary Technologies. Analyze the results of the site investigations in relation to the preliminary remedial technologies developed in Task 4. Data supporting, or rejecting, types of remedial technologies, compatability of wastes and construction materials, and other conclusions should be presented.

## TASK 6 -- FINAL REPORT

The Engineer shall prepare a final report covering the remedial investigation phase and submit [specify number and distribution] copies to [specify EPA, the State, as appropriate]. The report shall include the results of Task 1 through 5, and should include additional information in an appendix. The report shall be structured to enable the reader to cross-reference with ease.

## TASK 7 -- COMMUNITY RELATIONS SUPPORT

[Note: The following paragraph applies when community relations support is conducted under the work covered by this SOW (e.g., under a cooperative agreement). The paragraph may be modified to meet specific site or project conditions.]

The Engineer may be required to furnish the personnel, services, materials and equipment required to undertake a community relations program. Although this may be a limited program, community relations must be integrated closely with all remedial response activities. The objectives of this effort are to achieve community understanding of the actions taken and to obtain community input and support prior to selection of the remedial alternative(s).

Community relations support includes but may not be limited to the following:

- Revisions or additions to community relations plans including definition of community relations program needs for each remedial activity.
- Analysis of community attitudes toward proposed actions.
- Preparation and dissemination of news releases, fact sheets, slide shows, exhibits, and other audio-visual materials designed to apprise the community of current or proposed actions.

- Establishment of a community information center.

- Arrangement of briefings, press conferences, workshops, and public and other informal meetings.

- Assessment of the successes and failures of the community relations program.

- Preparation of reports and participation in public meetings, project review meetings, and other meetings as necessary to the normal progress of the work.

- Solicitation, selection and approval of subcontractors, if needed.

All community relations support must be consistent with:

- Superfund community relations policy, as stated in the "Guidance for Implementing the Superfund Program".

- Community Relations in Superfund -- A Handbook.

## TASK 8 -- ADDITIONAL REQUIREMENTS

a. Reporting Requirements

[Note: The following paragraph applies when the SOW is being used in a contract between the State and an Engineer. Typical requirements are described but may be modified based on the size and complexity of the specific project.]

Monthly reports shall be prepared by the Engineer to describe the technical and financial progress of the project. These reports should discuss the following items:

1. Identification of site and activity.
2. Status of work at the site and progress to date.
3. Percentage of completion[1]
4. Difficulties encountered during the reporting period.
5. Actions being taken to rectify problems.
6. Activities planned for the next month.
7. Changes in personnel.
8. Actual expenditures including fee and direct labor hours expended for this period.[1]
9. Cumulative expenditures (including fee) and cumulative direct labor hours.

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[1] Indicates data required for input to EPA's Project Tracking System/Project Management Module (PTS/PMM).

10. Projection of expenditures for completing the project, including an explanation of any significant variation from the forecasted target.[1]

11. A graphic representation of proposed versus actual expenditures (plus fee) and comparison of actual vs. target direct labor hours. A projection to completion will be made for both.

The monthly progress report will list target and actual completion dates for each element of activity including project completion and provide an explanation of any deviation from the milestones in the work plan schedule.

[Note: When the SOW is used in a cooperative agreement, the previous section should be replaced with reporting requirements consistent with 40 CFR Part 30 and the Guidance for Cooperative Agreements and Contracts with States, current version dated March 11, 1982.* These require that quarterly progress reports and a final report ** be submitted to EPA by the State.]

b. Chain-of-Custody. Any field sampling collection and analyses conducted shall be documented in accordance with chain-of-custody procedures as provided by EPA.

c. Safety Plan. A safety plan will be developed to protect the health and safety of personnel involved in the remedial investigation. The plan will be consistent with: ***

- Section 111(c)(6) of CERCLA
- EPA Order 1440.1 -- Respiratory Protection
- EPA Order 1440.3 -- Health and Safety Requirements for Employees Engaged in Field Activities
- EPA Occupational Health and Safety Manual
- Other EPA guidance as provided
- State safety and health statutes
- Site conditions

d. Quality Assurance/Quality Control (QA/QC). The Engineer shall prepare and submit as part of the work plan a Quality Assurance Project Plan for the sampling, analysis, and data handling aspects of the remedial investigation. The plan shall be consistent with the requirements of EPA's Contract Laboratory Program. The plan shall address the following points:

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*This document, "State Participation in the Superfund Remedial Program," revises and updates this guidance.

**No longer required.

***It should also be consistent with EPA Interim Standard Operat Safety Guide (September 1982) and with applicable OSHA standards.

1. QA Objectives for Measurement Data, in terms of precision, accuracy, completeness, representativeness, and comparability.
2. Sampling Procedures.
3. Sample Custody.
4. Calibration Procedures, References, and Frequency.
5. Internal QC Checks and Frequency.
6. QA Performance Audits, System Audits, and Frequency.
7. QA Reports to Management.
8. Preventive Maintenance Procedures and Schedule.
9. Specific Procedures to be used to routinely assess data precision, representativeness, comparability, accuracy, and completeness of specific measurement parameters involved. This section will be required for all QA project plans.
10. Corrective Action.

# FEASIBILITY STUDY
# MODEL STATEMENT OF WORK

## PURPOSE

The purpose of this remedial action feasibility study is to develop and evaluate remedial alternatives, and to identify the cost-effective remedial action to be taken at [specific site], an uncontrolled hazardous waste site. The Engineer shall furnish the necessary personnel, materials, and services required to prepare the remedial action feasibility study, except as otherwise specified herein.

## SCOPE

The feasibility study consists of eight tasks:

Task 9 - Description of Proposed Response

Task 10 - Development of Alternatives

Task 11 - Initial Screening of Alternatives

Task 12 - Laboratory Studies

Task 13 - Evaluation of the Alternatives

Task 14 - Conceptual Design

Task 15 - Final Report

Task 16 - Additional Requirements

A work plan that includes a detailed technical approach, a budget, personnel requirements, and schedules shall be submitted for the proposed feasibility study.

## FEASIBILITY STUDY
## MODEL WORK PLAN SCHEDULE

| Task No. | Activity* | Output | Target Completion Date | Estimated Cost | Personnel Work Hours | Actual Completion Date |
|---|---|---|---|---|---|---|
| 9 | Description of Proposed Response | | | | | |
| 10 | Development of Alternatives | Preliminary Alternatives Submitted, Draft Final Report Section | | | | |
| 10-a | Response Objectives | | | | | |
| 10-b | Identification of Remedial Alternatives | | | | | |
| 11 | Initial Screening of Alternatives | Draft Final Report Section | | | | |
| 12 | Laboratory Studies [Optional] | | | | | |
| 13 | Evaluation of Alternatives | Preliminary Final Report | | | | |
| 13-a | Detailed Development of Remaining Alternatives | | | | | |
| 13-b | Environmental Assessment | Environmental Information Document | | | | |
| 13-c | Cost Analysis | | | | | |
| 13-d | Evaluation and Recommendation of Cost-Effective Alternative | | | | | |
| 13-e | Preliminary Report | Preliminary Report | | | | |
| 14 | Conceptual Design | Draft Final Report Section | | | | |
| 15 | Final Report | Final Report | | | | |
| 16 | Additional Requirements | | | | | |

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* To correspond to Superfund standard remedial terminology, this column should be entitled "Task/Subtask Name."

## TASK 9--DESCRIPTION OF CURRENT SITUATION AND PROPOSED RESPONSE

Information on the site background, the nature and extent of the problem, and previous response activities presented in the Remedial Action Master Plan or Task 1 of the remedial investigation may be incorporated by reference. Any changes to the original project scope described in the RAMP should be discussed and justified based on results of the remedial investigation.

Following this summary of the current situation, a site-specific statement of purpose for the response, based on the results of the remedial investigation, should be presented. The statement of purpose should be organized in terms of components amenable to discrete remedial measures (e.g., a statement of purpose describing the evaluation of alternatives for treatment of contaminated ground water).

## TASK 10--DEVELOPMENT OF ALTERNATIVES

Based on the results of the remedial investigation and consideration of preliminary remedial technologies (Task 4), the Engineer shall develop a limited number of alternatives for source control or off-site remedial actions, or both, on the basis of objectives established for the response and the scoping decision.

### a. Establishment of Remedial Response Objectives

Establish site-specific objectives for the response. These objectives shall be based on public health and environmental concerns, the Remedial Action Master Plan and scoping decision, information gathered during the remedial investigation, Section 300.68 of the National Contingency Plan (NCP), EPA interim guidance, and the requirements of any other applicable Federal statutes. Preliminary cleanup objectives shall be developed in consultation with EPA and the State.

### b. Identification of Remedial Alternatives

Develop alternatives to incorporate remedial technologies (from Task 4b), response objectives, and other appropriate considerations into a comprehensive, site-specific approach. Alternatives should include non-cleanup (e.g., alternative water supply, relocation) and no-action options. The alternatives shall be developed in close consultation with EPA and the State.

## TASK II--INITIAL SCREENING OF ALTERNATIVES

The alternatives developed in Task 2 will be screened by the Engineer, EPA, and the State to eliminate alternatives that are clearly not feasible or appropriate, prior to undertaking detailed evaluations of the remaining alternatives.

### Considerations to be Used in Initial Screening

Three broad considerations must be used as a basis for the initial screening: cost, effects of the alternative, and acceptable engineering practices. More specifically, the following factors must be considered:

1) Cost. An alternative whose cost far exceeds that of other alternatives will usually be eliminated. Total cost will include the cost of implementing the alternative and the cost of operation and maintenance.

2) Environmental effects. Alternatives posing significant adverse environmental effects will be excluded.

3) Environmental protection. Only those alternatives that satisfy the response objectives and contribute substantially to the protection of public health, welfare, or the environment shall be considered further. Source control alternatives shall achieve adequate control of source materials. Off-site alternatives shall minimize or mitigate the threat of harm to public health, welfare, or the environment.

4) Implementability and reliability. Alternatives that may prove extremely difficult to implement, will not achieve the remedial objectives in a reasonable time period, or rely on unproven technology will be eliminated.

## TASK 12--LABORATORY STUDIES [If Required]

The Engineer shall conduct any necessary laboratory and bench scale treatability studies required to evaluate the effectiveness of remedial technologies and establish engineering criteria (e.g., leachate treatment; ground water treatment; compatability of waste/leachate with site barrier walls, cover, and other materials proposed for use in the remedy). It is expected that the scope of this task will depend on the results of Tasks 10 and 11 and therefore will not be complete at the start of Task 13. The Engineer will submit a separate work plan for any proposed laboratory studies for EPA and State approval. This submittal will be made in the timeframe required to maintain steady progress of the overall feasibility study. [Additional studies may also be conducted during the design phase if needed to refine treatability results or develop detailed design criteria.]

## TASK 13--EVALUATION OF THE ALTERNATIVES

The Engineer shall evaluate the alternative remedies that pass through the initial screening in Task 11 and recommend the most desirable (cost effective) alternative to EPA and the State.

Alternative evaluation shall be preceded by a detailed development of the remaining alternatives.

### a. Detailed Development of Remaining Alternatives

The detailed development of the remaining feasible remedial alternatives shall include as a minimum:

1) Description of appropriate treatment and disposal technologies.

2) Special engineering considerations required to implement the alternative (e.g., pilot treatment facility, additional studies needed to proceed with final remedial design).

3) Environmental impacts and proposed methods, and costs, for mitigating any adverse effects.

4) Operation, maintenance, and monitoring requirements of the remedy.

5) Off-site disposal needs and transportation plans.

6) Temporary storage requirements.

7) Safety requirements for remedial implementation (including both on-site and off-site health and safety considerations).

8) A description of how the alternative could be phased into individual operable units. The description should include a discussion of how various operable units of the total remedy could be implemented individually or in groups, resulting in a significant improvement to the environment or savings in costs.

9) A description of how the alternative could be segmented into areas to allow implementation of differing phases of the alternative.

10) A review of any off-site facilities provided by the state to ensure compliance with applicable RCRA requirements, both current and proposed.

### b. Environmental Assessment

Perform an Environmental Assessment (EA) for each alternative. The EA shall include, at a minimum, an evaluation of each alternative's environmental effects, an analysis of measures to mitigate adverse effects, physical or legal constraints, and compliance with CERCLA or other regulatory requirements.

See pages E-24 and E-25 for revised description.

### c. Cost Analysis

Evaluate the cost of each feasible remedial action alternative (and for each phase or segment of the alternative). The cost will be presented as a present worth cost and will include the total cost of implementing the alternative and the annual operating and maintenance cost. Both monetary costs and associated non-monetary costs will be included. A distribution of costs over time will be provided.

### d. Evaluation and Recommendation of Cost-Effective Alternative

Alternatives shall be evaluated using technical, environmental, and economic criteria. At a minimum, the following areas will be used to evaluate alternatives:

1. Reliability. Alternatives that minimize or eliminate the potential for release of wastes into the environment will be considered more reliable than other alternatives. For example, recycling of waste and off-site incineration would be considered more reliable than land disposal. Institutional concerns such as management requirements can also be considered as reliability factors.

2. Implementability. The requirements of implementing the alternatives will be considered, including phasing alternatives into operable units and segmenting alternatives into project areas on the site. The requirements for permits, zoning restrictions, right of ways and public acceptance are also examples of factors to be considered.

3. Operation and Maintenance Requirements. Preference will be given to projects with lower O&M requirements, other factors being equal.

4. Environmental Effects. Alternatives posing the least impact (or greatest improvement) on the environment will be favored.

5. Safety Requirements. On-site and off-site safety requirements during implementation of the alternatives should be considered. Alternatives with lower safety impact and cost will be favored.

6. Cost. The remedial alternative with the lowest total present worth cost will be favored. Total present worth cost will include capital cost of implementing the alternative and cost of operations and maintenance of the proposed alternative.

Recommend the alternative determined to be the most cost-effective. The recommendation will be justified by stating the relative advantages over other alternatives considered. Evaluative considerations shall be applied uniformly to each alternative. The lowest cost alternative that is technologically feasible and reliable and that adequately protects (or mitigates damage to) public health, welfare, or the environment will be considered the cost-effective alternative.

### e. Preliminary Report

Prepare a preliminary report presenting the results of Tasks 9 through 13 and the recommended remedial alternative. Submit [specify number and distribution] copies of the preliminary report to EPA and the State. (Note: EPA and the State will review and select a remedial alternative).

## TASK 14--CONCEPTUAL DESIGN

Prepare a conceptual design of the remedial alternative selected by EPA and the State. The conceptual design shall include, but is not limited to, the engineering approach including implementation schedule, special implementation requirements, institutional requirements, phasing and segmenting considerations, preliminary design criteria, preliminary site and facility layouts, budget cost estimate (including operation and maintenance costs), operating and maintenance requirements and duration, and an outline of the safety plan including cost impact on implementation. Any additional information required as the basis for the completion of the final remedial design will also be included. The Engineer may also be required to revise portions of the community relations plan to reflect the results of the conceptual design.

## TASK 15--FINAL REPORT

Prepare a final report for submission to EPA and the State. The report shall include the results of Tasks 9 through 14, and should include any supplemental information in an appendix. Submit [specify number and distribution of copies] to EPA and the State.

## TASK 16--ADDITIONAL REQUIREMENTS

Reporting requirements are described in Task 8 of the remedial investigation scope of work.

## Changes to Model SOW Task 1b (Nature and Extent of Problem)

1. Add the following prior to the last sentence in para. 1b.

> Describe any reports of human or animal related illnesses that may be related with the site.

## Changes to Model SOW Task 5a (Data Analysis)

1. Change title to "Data Analysis and Exposure Assessment"
2. Delete para. 5a and replace with:

> Analyze all site investigation data and develop a summary of the type and extent of contamination at the site. The summary should describe the quantities and concentration of a specific chemical at the site and ambient levels surrounding the site. Prepare an exposure assessment describing the number and location and types of nearby populations, activities and pathways that may result in an actual or potential threat to public health, welfare, or the environment, and a projection of chemical concentrations at the different points of exposure through each media pathway over the likely period of exposure.
>
> The analysis should discuss the degree to which either source control or off-site measures are required to significantly mitigate the threat to public health, welfare, or the environment. If the results of the investigation indicate that no threat or potential threat exists, a recommendation to stop the remedial response should be made.

## Changes to Model SOW Task 13b (Environmental Assessment)

1. First para. remains as is.
2. Delete second para. and replace with:

> In addition, each alternative will be assessed in terms of the extent to which it mitigates long-term exposure to any residual contaminations and protects public health both during and after completion of the remedial action. The assessment shall describe the levels and characteristics of contaminants, potential exposure routes, and potentially affected population (the exposure assessment prepared in Task 5a should be used for this). The effect of "no action" should be described in terms of the short term effects (eg. lagoon failure), the long term

exposure to hazardous substances, and resulting public health impacts. Each remedial alternative shall be evaluated to determine the level of exposure to contaminants and the reduction over time. The relative reduction in public health impacts for each alternative will be compared to the no action level. For off-site measure the relative reduction in impact will be determined by comparing residual levels of each alternative with existing criteria, standards or guidelines acceptable to EPA. For source control measures, or when criteria, standards, or guidelines are not available, the comparison should be made based on the relative effectiveness.

The relative reduction in public health impacts for each alternative will be compared by listing alternatives in increasing level of protection. The no action alternative will serve as the baseline for the analysis.

# APPENDIX F

## SAMPLE COOPERATIVE AGREEMENT APPLICATION PROVISIONS

### PURPOSE

This appendix has been provided to assist State Project Officers (SPOs) and Regional Site Project Officers (RSPOs) in developing Cooperative Agreement provisions and special conditions necessary to meet EPA and Superfund program requirements.

### BACKGROUND

Remedial Cooperative Agreements awarded under CERCLA are subject to a number of terms and conditions. These terms and conditions must be defined in the Cooperative Agreement either as provisions, if developed and incorporated into the application by the State, or as special conditions, if added to the application by EPA. Cooperative Agreement application provisions and special conditions are of two types:

- Those that are general, necessary to meet EPA assistance and procurement requirements imposed on all applications for EPA assistance
- Those that are imposed by the Office of Emergency and Remedial Response (OERR), necessary to meet CERCLA and OERR requirements.

Provisions of the latter type address the same kinds of requirements imposed on EPA-lead agreements; however, the manner in which EPA obliges the State to fulfill these requirements under a Cooperative Agreement is in some cases different from State responsibilities under agreements for EPA-lead projects. (Sample articles for EPA-lead remedial response agreements can be found in Appendix H.)

Development of Cooperative Agreement provisions is one step in compiling the Cooperative Agreement application package. SPOs are responsible for reviewing all requirements for Cooperative Agreements shown below and addressing all applicable requirements in an attachment to the Cooperative Agreement application form. Requirements not adequately addressed in the State's application will be discussed in special conditions included in the application package by EPA prior to award.

## APPENDIX SUMMARY

This appendix contains examples of provisions that have been used in remedial Cooperative Agreements. It is organized in two sections to reflect the two different types of provisions:

- General provisions
- Superfund program provisions.

Within each section, specific requirements are highlighted and one or more examples of acceptable Agreement provisions are shown. Examples are intended to be used only as a guide for drafting specific provisions and must be tailored to address individual site conditions.

This appendix contains examples of Cooperative Agreement provisions only. Occasionally, introductory remarks to a specific provision will mention EPA-lead agreements, when requirements for such agreements differ from those for Cooperative Agreements. This is intended to contrast requirements and contents of the two types of agreement vehicles for the benefit of State and EPA staff. Sample articles for inclusion in EPA-lead remedial response agreements can be found in Appendix H.

## 1. GENERAL PROVISIONS

General Cooperative Agreement provisions address EPA requirements applicable to all Superfund applications for Agency financial assistance. Examples of four types of articles are included below:

- Authority
- Procurement Standards
- Letter of Credit Procedures
- Prompt Payment Act Provisions.

The provisions in this section are taken from the list of standard assistance agreement special conditions published by EPA.

### A. Authority

EPA awards this Cooperative Agreement in accordance with the Federal Grant and Cooperative Agreement Act of 1977. This Agreement is subject to all applicable EPA assistance regulations.

### B. Procurement Standards

This Agreement is subject to the procurement standards of Title 40 of the Code of Federal Regulations Part 33 (copy enclosed).

(If the State has not certified its procurement system in accordance with EPA's regulation, it should also use the second Submission of Documents provision, shown on page F-17.)

### C. Letter of Credit Procedures

In accepting this Cooperative Agreement, the recipient agrees to the following conditions for the letter of credit method of financing:

a) Cash draw-downs will occur only when needed for disbursements

b) Timely reporting of cash disbursements and balances will be provided, as required by the EPA Letter of Credit Users Manual

c) The same standards of timing and reporting will be imposed on secondary recipients, if any

d) When a draw-down under the letter of credit occurs, the recipient will show on the back of the voucher (Form TFS-5401) the Cooperative Agreement number, the appropriate EPA account number, and the draw-down amount applicable to each account/activity (see attached "Instructions for Using the Superfund Account Number Under Cooperative Agreements"). The eighth digit of the account number (see Item 39, page 1 of the Cooperative Agreement) is the code to the appropriate activity assignment:

L - Remedial Planning, consisting of the following subactivities:

- Remedial Investigation/ Feasibility Study

- Remedial Design

R - Remedial Implementation, consisting of the following subactivities:

- Remedial Action
- Operation and Maintenance
- Initial Remedial Measure

[A - Support and Management]*

e) When funds for a specific activity have been exhausted but the work under the activity has not been completed, the recipient may not draw down from another activity or site account without written permission from the EPA Project Officer and Award Official

f) Funds remaining in an account after completion of an activity may either be returned to EPA or adjusted to another activity or site, at EPA's discretion

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* To be included only in Cooperative Agreements covering more than one site.

g) When a subactivity is completed, the recipient will submit a Financial Status Report (Standard Form 269) within 90 days to the EPA Project Officer.

Failure on the part of the recipient to comply with the above conditions may cause the unobligated portions of the letter of credit to be revoked and the financing method changed to a reimbursable basis.

## D. Prompt Payment Act Provisions

In accordance with section 2(d) of the Prompt Payment Act (PL 97-177), Federal funds may not be used by the recipient for the payment of interest penalties to contractors when bills are paid late, nor may interest penalties be used to satisfy cost-sharing requirements. Obligations to pay such interest penalties will not be obligations of the United States.

## 2. SUPERFUND PROGRAM PROVISIONS

Superfund program provisions address requirements imposed by CERCLA and OERR policy on projects carried out under CERCLA remedial Cooperative Agreements. This section contains provisions that address seventeen such requirements:

- CERCLA Section 104(c)(3) Assurances
    - Operation and Maintenance (O&M)
    - Off-Site Treatment, Storage, or Disposal
    - Cost-Sharing
- State Credits
- Fund Balancing
- National Contingency Plan
- Duties of the RSPO and SPO
- Site Access and Permits
- Community Relations Plan
- Site Safety Plan
- Floodplain Requirements
- Access to Files
- Reporting Requirements
- Submission of Documents
- Responsible Party Activities
- Conflict of Interest
- Emergency Response Action
- Negation of Agency Relationship
- Enforcement and Cost Recovery.

In some cases, more than one example has been provided. These examples may be used, as appropriate, to develop provisions of or special conditions to the Cooperative Agreement application.

### A. CERCLA Section 104(c)(3) Assurances

Before EPA funds remedial implementation (including an initial remedial measure), the State is required by CERCLA section 104(c)(3) to provide assurances regarding operation and maintenance (O&M), off-site treatment, storage, or disposal, and cost-sharing.

#### Operation and Maintenance

Applications containing remedial actions requiring O&M should use the following provision or its equivalent:

> Pursuant to CERCLA section 104(c)(3)(A), the State shall provide all future operation and maintenance costs (O&M) of the remedial actions provided under this Agreement for the expected life of such actions. The State agrees to submit an O&M plan and receive EPA approval for that plan prior to drawing down funds for remedial implementation.

The requirements for an O&M Plan are outlined in Section III.B.2 of the text.

Off-Site Treatment, Storage, or Disposal

The State is required by CERCLA section 104(c)(3)(B) to assure the availability of adequate off-site treatment, storage, or disposal if this is necessary for the remedial action at a given site. The assurance should be consistent with the policy memorandum entitled "Requirements for Selecting an Off-Site Option in a Superfund Response Action" issued by OSWER on January 28, 1983 (shown in Appendix P). If the selected facility requires a new compliance inspection in accordance with the provisions of the Resource Conservation and Recovery Act (RCRA), the RSPO should coordinate with Regional RCRA personnel and may offer REM/FIT assistance, if appropriate (see memorandum for more details).

When a State contractor will provide the necessary off-site facility, the following provision or its equivalent should be used:

> The State and EPA have determined that off-site treatment, storage, or disposal of hazardous substances is required for the activities funded under this Agreement. Pursuant to CERCLA section 104(c)(3)(B), the State is required to assure the availability of a hazardous waste facility. The State, in its invitation for bids for the remedial action, will require respondents to provide adequate capacity for waste disposal at a facility (or facilities) that at a minimum meets the requirements of Subtitle C of the Solid Waste Disposal Act (RCRA). If a designated facility does not have a RCRA Part B permit, or a RCRA compliance inspection has not been completed at the designated facility within the 12 month period before the date of award of this Agreement, a new inspection will be completed prior to award of a contract for treatment, storage, or disposal.

> Prior to award of the contract, the EPA Regional office will review the results of the compliance inspection and the interim status authority. If deficiencies exist which may result in unsound treatment, storage, or disposal practices, or pose a threat of future releases, the facility shall not be selected to receive hazardous substances for the project. State acceptance of a contractor's bid will constitute the State's assurance to EPA that CERCLA section 104(c)(3)(B) requirements have been met.

When the State will identify the off-site facility, the following or equivalent language should be used:

> The State and EPA have determined that off-site treatment, storage, or disposal of hazardous substances is required for the activities funded under this Agreement. Pursuant to CERCLA section 104(c)(3)(B), the State will identify one or more facilities with adequate capacity for waste disposal that are acceptable to EPA and at a minimum are in compliance with Subtitle C of the Solid Waste Disposal Act (RCRA). If a designated facility does not have a RCRA Part B permit, or a RCRA compliance inspection has not been completed at the designated facility within the 12-month period before the date of award of this Agreement, a new inspection will be completed prior to the award of a contract for treatment, storage, or disposal. Prior to award of the contract, the EPA Regional office will review the results of the compliance inspection and the interim status authority. If deficiencies exist which may result in unsound treatment, storage, or disposal practices, or pose a threat of future releases, the facility shall not be selected to receive hazardous substances for the project.

State Cost-Sharing

Under an SSC, the State provides cash payments to meet its cost-sharing obligation; to fulfill its CERCLA section 104(c)(3) cost-sharing assurance, then, the SSC must include an article which documents State cost-sharing contribution terms (see Appendix H). Under a Cooperative Agreement, however, the State can meet its cost-sharing assurance requirements by completing the project budget sheets included in the Cooperative Agreement application form (see Appendix G); no specific provision addressing cost-sharing is necessary.

However, under the provisions of CERCLA section 104(C)(3), the State is obligated to pay at least 50 percent of all response costs if the site was publicly-owned at the time of disposal. All Cooperative Agreement applications for remedial planning at known publicly-owned sites or sites about which there is a question of ownership should contain the provision that the State will retroactively provide its 50-percent share of all response costs at the time of remedial action if the State or a political subdivision is found to have been responsible for ownership. The following, or its equivalent, may be used for this purpose:

> If EPA determines that the site was owned by the State or one (or more) of its political subdivisions at the time of disposal, the State will be responsible for at least 50 percent of all response costs at the site. In that event, this Cooperative Agreement or any other Cooperative Agreement or Contract to undertake remedial action at the site shall provide for payment by the State of at least 50 percent of the costs of any removal actions, the remedial investigation, the feasibility study, the remedial design, and any remedial implementation related to the site.

## B. State Credits

Under a Cooperative Agreement covering activities requiring State cost-sharing, the State may provide up to 100 percent of its cost-sharing obligation by authorizing draw-down of available, site-specific credit granted pursuant to CERCLA section 104(c)(3)(C). When this is the case, the Cooperative Agreement application must contain a provision documenting the use of such credit. At sites where the State has submitted a credit claim for EPA verification but has not yet received that verification, the following provision may be used for a remedial implementation project at a privately-owned site:

> CERCLA sections 104(c)(3) and 104(d)(1) require that the State pay or assure payment of 10 percent of the costs of the remedial implementation subactivities to be undertaken pursuant to this Cooperative Agreement. CERCLA section 104(c)(3)(C) provides that EPA will grant the State a credit against the share of the costs for which it is responsible under this section for

> any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof between January 1, 1978, and December 11, 1980, for eligible response actions. The State claims a credit of $30,000 [amount of credit claim] for expenditure of funds for response actions at this site between January 1, 1978, and December 11, 1980. EPA accepts this estimate at face value pending final verification of the eligibility and allowability of claimed costs. At EPA's request, the State shall make supporting documentation available for audit. Based on final verification of these costs, the amount the State will have to provide as its cost share for remedial implementation conducted under this Cooperative Agreement will be adjusted to satisfy the State's cost-sharing responsibilities. The State will not be reimbursed for any credit remaining at the conclusion of Federally-funded response actions at this site, nor may the State apply remaining credit to the cost of remedial activities at another site.

When the State has a verified credit, the following paragraph is appropriate for an agreement covering a remedial implementation project at a privately-owned site:

> CERCLA sections 104(c)(3) and 104(d)(1) require that the State pay or assure payment of 10 percent of the costs of the remedial implementation subactivities to be undertaken pursuant to this Cooperative Agreement. CERCLA section 104(c)(3)(C) provides that EPA will grant the State a credit against the share of the costs for which it is responsible under this section for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof between January 1, 1978, and December 11, 1980, for eligible response actions. The State has a verified credit of $30,000 [amount of verified credit] for expenditure of funds for response actions at this site between January 1, 1978, and December 11, 1980. This credit will be applied toward the State's cost-sharing obligation for remedial implementation conducted under this Cooperative Agreement. The State will not be reimbursed for any credit remaining at the conclusion of Federally-funded response actions at this site, nor may the State apply remaining credit to the cost of remedial activities at another site.

Under previous EPA policy, some States have been required to share in the costs of remedial planning activities at privately-owned sites. The memorandum entitled "Guidance on Implementing Waiver of 10 Percent Cost-Share for Remedial Planning," issued by the Director, OERR on June 1, 1983 (see Appendix P), provided that each such Cooperative Agreement should be amended to revise the budget to either provide for 100 percent EPA funding or to apply these State costs to later cost-sharing obligations for remedial implementation at the site. If the latter option is used, the Cooperative Agreement or amendment funding remedial implementation at the site should document the use of previously paid State cost-sharing. The following provision may be used for this purpose:

> The State has shared in the costs of remedial planning activities at the site described herein under Cooperative Agreement CX [______]. In accordance with Special Condition No. [____] of that Agreement, the remedial planning costs incurred by the State under that Agreement are being applied toward its cost-sharing obligation for the remedial implementation subactivities funded by this Agreement. The State claims remedial planning costs of $50,000 [amount of claimed expenditures] under that Agreement. EPA accepts this claim at face value, pending final verification of the eligibility and allowability of claimed costs. At EPA's request, the State shall make supporting documentation available for audit. Based on final verification of these costs, the amount the State will have to provide as its cost share for remedial implementation under this Cooperative Agreement will be adjusted to satisfy the State's cost-sharing responsibilities.

## C. Fund-Balancing

The State should acknowledge that applications for further funding after the initial award will be weighed against requirements to respond at other sites. The following provision may be used for this purpose:

> CERCLA section 104(c)(4) requires that CERCLA-funded actions provide a cost-effective response, balancing the need for protection of public health, welfare, and the environment against the availability of amounts from the Fund to respond at other sites. If the State requests CERCLA funding for additional activities at the site,

EPA will evaluate the request against available Fund monies. Award of this Cooperative Agreement does not commit EPA to future funding for response actions at the site.

## D. National Contingency Plan (NCP)

A Cooperative Agreement will not be awarded unless proposed activities are scoped according to the NCP. In addition, the State should guarantee that any future activities for which it requests Fund monies will also be developed in accordance with that regulation. The following provision may be used for applications containing remedial planning subactivities:

> All activities conducted under this Cooperative Agreement shall be consistent with the revised National Contingency Plan (NCP), 40 CFR 300, dated July 16, 1982 (47 Federal Register 31180). Remedial alternatives developed as part of the remedial investigation and feasibility study will be identified, evaluated, and ultimately categorized as initial remedial, source control, or off-site measures based upon the factors established in section 300.68(e) of the NCP.

## E. Duties of the RSPO and SPO

As in EPA-lead remedial response agreements, certain duties of both the EPA RSPO and the SPO should be specifically stated in the Cooperative Agreement application. Duties will vary depending on the conditions and requirements of individual sites; assistance can be provided by the Regional program office to determine which duties should be enumerated. Two examples are given here:

a. The EPA Project Officer will conduct periodic reviews and site inspections to evaluate project activities to assure compliance with applicable EPA requirements and regulations. The State Project Officer will assure that all project schedules and reporting requirements are met.

b. The EPA Project Officer will conduct periodic reviews and visits to evaluate project activities to assure compliance with applicable EPA requirements and regulations. The State Project Officer agrees to ensure that schedules and reporting requirements are

> met. All State-proposed modifications to schedules or activities will be reported immediately to the EPA Project Officer for approval. The EPA Project Officer agrees to notify the State Project Officer of schedule changes resulting from EPA enforcement activities.

### F. Site Access and Permits

The State is responsible for acquiring all permits and approvals necessary to carry out work at the site. The following provision may be used to document this responsibility:

> The State agrees to satisfy all Federal, State, and local requirements, including permits and approvals, necessary for implementing activities addressed in this Cooperative Agreement. The State will provide access to the site, as well as all rights-of-way and easements necessary to complete the response actions. The State will provide access to EPA employees and contractors at all reasonable times.

### G. Community Relations Plan (CRP)

In accordance with EPA policy, a draft CRP is to be submitted with the draft Cooperative Agreement application package and a final CRP is to be submitted with the final application. The CRP will specify whether a State agency or EPA will have lead responsibility for the community relations program. In addition to including the CRP as an attachment, the Cooperative Agreement should include a condition pertaining to the CRP as follows:

> The State and EPA agree that the community relations activities at the site will be conducted in accordance with the Community Relations Plan, contained in the State's application dated ______.

In every application for remedial planning activities, the State should also address NEPA requirements for public input by specifically stating that it will allow a period of public comment on recommended actions. The following provision may be used for this purpose:

> The State agrees that public input will be sought at the end of the feasibility study and prior to final selection of remedy in accordance with the approved Community Relations Plan.

[A sample CRP is provided in Appendix K.]

## H. Site Safety Plan

The State is required to have a site safety plan providing for the protection of on-site personnel and area residents. The safety plan must be consistent with the following:

- CERCLA sections 104(f) and 111(c)(6)
- EPA Order 1440.2 - *Health and Safety Requirements for Employees Engaged in Field Activities*
- EPA Order 1440.1 - *Respiratory Protection*
- *EPA Occupational Health and Safety Manual*
- *EPA Interim Standard Operating Safety Guide (September 1982)*
- Applicable OSHA standards
- State safety and health standards and site conditions.

It may be prepared either by State staff or by a State contractor but must be in place before the commencement of field work at a site. Unless the plan is completed and submitted with the final assistance application, a provision must be included in the application to acknowledge the State's awareness of this requirement. The following provision may be used for this purpose:

> A final safety plan shall be prepared for activities performed pursuant to this Cooperative Agreement. The plan shall be approved by the EPA Regional Site Project Officer and shall be consistent with the requirements of CERCLA section 104(f), EPA's Occupational Health and Safety Manual, and other applicable EPA safety guidance provided by the EPA Project Officer. As a condition to awarding contracts to any person to engage in response actions, the State shall require contractors and subcontractors to comply with the developed safety plan and all relevant Federal health and safety standards. No field work at a site shall occur until a safety plan for that site has been approved by EPA.

[A sample site safety plan can be found in Appendix M.]

## I. Floodplains Requirement

The Floodplains Management Executive Order (E.O. 11988) and EPA implementing regulations (40 CFR Part 6, Appendix A) require EPA to avoid, to the extent possible, long- and short-term adverse impacts associated with the occupancy and modification of floodplains and, further, to avoid any support of floodplain development where there are practicable alternatives. They also require a public participation program. If any remedial response occurs in a floodplain, the Agency must minimize potential harm to people, property, natural and beneficial floodplain values, and must incorporate floodplain management goals into the planning and decision-making process. To meet these requirements, a State applying for a Cooperative Agreement in or near a floodplain must analyze the impacts of the proposed activities on the floodplain, consistent with the Executive Order, and prepare a floodplain assessment as part of the feasibility study. Such Cooperative Agreement applications should contain a provision addressing EPA's floodplains requirements; the following, or its equivalent, can be used for this purpose:

> The State agrees to avoid, to the extent possible, any action in the floodplain. If there is no cost-effective alternative to such action, the State will evaluate the potential effects of these activities in the floodplain pursuant to Executive Order 11988 (see 40 CFR Part 6, Appendix A). This evaluation will be incorporated as part of the feasibility study report. Any actions taken in the floodplain will seek to reduce the risk of flood loss, to minimize potential harm to people and property, and to restore and preserve the natural and beneficial values served by the floodplain.

## J. Access to Files

The State should include in its application a provision for public access to the site files maintained by EPA and the State, while at the same time making any necessary arrangements for confidentiality. In addition, the Cooperative Agreement application should contain a provision stating that both EPA and the State will be granted access to each other's files. Appropriate references to specific State statutes and requirements are encouraged. Requirements for confidentiality should be communicated to appropriate EPA Regional and Headquarters personnel for assistance in developing appropriate language. Examples of provisions to address this requirement are provided below:

a. The State will allow public access to its records in accordance with applicable State law. EPA will allow public access to its records in accordance with the procedures established under the Freedom of Information Act (PL 93-502), regulations promulgated pursuant thereto, and agency guidance. Both parties agree to protect each other's claims for confidentiality, particularly with regard to documents related to pending or ongoing enforcement actions, generated by either the State or EPA.

b. At EPA's request and to the extent allowed by State law, the State shall make available to EPA any information in its possession concerning the site. At the State's request and to the extent allowed by Federal law, EPA shall make available to the State any information in its possession concerning the site. If any information is provided to EPA by the State under a claim of confidentiality, it will be treated in accordance with 40 CFR 2, if the State has given EPA notice of the claim of confidentiality. EPA will not disclose information submitted under a claim of confidentiality unless EPA is required to do so by Federal law and has given the State advance notice of EPA's intent to release that information. Absent notice of such claim, EPA may make said information available to the public without further notice.

## K. Reporting Requirements

Unlike an EPA-lead remedial response agreement, where EPA reports site progress to the State (see Appendix H), under a Cooperative Agreement the State is required to make quarterly progress reports to EPA. To signify acceptance of this requirement, the State should include a provision in its application addressing contents and timing of such reports. The following provision may be used:

> The State agrees to submit progress reports to the EPA Project Officer at quarterly intervals commencing at the start of the project. These reports shall include itemization of expenditures by object class and by each task/subactivity/ activity in the SOW (expenditures to date and

> expenditures since the previous report); estimates (percentages) of work completed for each activity or subactivity in the SOW, including a description of the basis for the estimates; and estimated variances (cost and time) expected at project completion.

## L. Submission of Documents

The State should guarantee in its application that all documents prepared under the Cooperative Agreement will be submitted to the RSPO for review, just as under an EPA-lead agreement, EPA provides that it will submit all such documents for State review (see Appendix H). The contents of a provision addressing this will vary depending upon whether the State's procurement system meets the intent of EPA's Requirements for Procurement Under Assistance Agreements (40 CFR Part 33). The following provision may be used when the State has certified its system on the Procurement System Checklist submitted with its Cooperative Agreement application:

> The State agrees to submit all final plans, reports, specifications, and/or recommendations to the EPA Project Officer for review and concurrence prior to issuance or implementation. Final contract documents or plans and contract changes shall be submitted to the EPA Project Officer prior to issuance for review to ensure technical adequacy and compliance with the terms of this Agreement.

If the State has not certified that its procurement system meets all the requirements of 40 CFR Part 33, the following provision is appropriate:

> The State agrees to submit all final plans, reports, specifications, and/or recommendations to the EPA Project Officer for review and concurrence prior to issuance or implementation. Final contract documents or plans and contract changes shall be submitted to the EPA Project Officer for review, as provided in 40 CFR 33.110(b)(2), before contract award or amendment.

## M. Responsible Party Activities

Some applications require the inclusion of an acknowledgement that responsible parties may come forward to perform some of the activities defined in the SOW. The provision below may be used for sites where litigation is ongoing and where, in the opinion of State and EPA attorneys, settlement may occur:

> If, during the period of this Agreement, responsible parties agree to perform, or pay for the performance of, any activities included in the SOW, EPA and the State agree to jointly negotiate any necessary modifications to this Agreement. If appropriate, this Agreement may be amended to adjust the State's letter of credit and the project SOW accordingly.

## N. Conflict of Interest

All Cooperative Agreement applications should contain a provision regarding contracts with potentially responsible parties. The following provision may be used for this purpose:

> EPA has determined that participation in a response action at a site by a potentially responsible party could create an organizational conflict of interest (*i.e.*, the contractor would be placed in a position where its interests as a potentially responsible party would conflict with its ability to properly perform the work or would otherwise adversely affect State or Federal enforcement action). Therefore, the State shall require a bidder or offeror on any contract funded under this Cooperative Agreement to provide, with its bid or proposal: (1) information on its status and the status of parent companies, subsidiaries, affiliates and subcontractors as potentially responsible parties at the site; (2) certification that, to the best of its knowledge and belief, it has disclosed such information or no such information exists; (3) a statement that it shall immediately disclose any such information discovered after submission of its bid or proposal, or after award. The State shall evaluate such information and shall exclude any bidder or offeror who is a potentially responsible party at the site if the State determines the bidder's or offeror's conflict of interest is significant and cannot be avoided or otherwise resolved.

## O. Emergency Response Actions

During the course of conducting the remedial activities covered by the Cooperative Agreement, it may become necessary to initiate emergency response actions at the site.

A Cooperative Agreement application should contain a provision acknowledging this eventuality and addressing the effect of any such emergency actions upon the remedial project in progress. The provision below, or its equivalent, may be used in an application for this purpose:

> Any emergency response activities conducted pursuant to the National Contingency Plan, 40 CFR section 300.65, shall not be restricted by the terms of this Agreement. EPA and the State may jointly suspend or modify the remedial activities in the SOW of this Agreement during and subsequent to necessary emergency response actions.

## P. Negation of Agency Relationship

It is important to both EPA and the State that a Cooperative Agreement contains a provision negating the principle that the State is acting as EPA's agent in the remedial response activity. This assertion could increase the potential for exposure to tort liability and could complicate cost recovery efforts. The following provision, or its equivalent, should be included in the Cooperative Agreement to negate this principle:

> Nothing contained in this Agreement shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. Any standards, procedures, or protocols prescribed in this Agreement to be followed by the State during the performance of its obligations under this Agreement are for assurance of the quality of the final product of the actions contemplated by this Agreement, and do not constitute a right to control the actions of the State. EPA (including its employees and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Agreement, and the State (including its employees and contractors) is not authorized to represent or act on behalf of EPA in any matter related to the subject matter of this Agreement. Neither EPA nor the State shall be liable for the contracts, acts, errors, or omissions of the agents, employees, or contractors of the other party entered into, committed or performed with respect to or in the performance of, this Agreement.

## Q. Enforcement and Cost Recovery

Under CERCLA, both EPA and affected States can institute enforcement actions against, and/or negotiations with, parties responsible for priority waste sites. When this occurs, a settlement or legal action by either party could potentially impede or even negate the claims of the other for recovery of funds expended at the site. Obligations, rights, and procedures for litigation must be defined as early as possible in the working relationship between EPA and the State to avoid this eventuality. Therefore, provisions concerning cost recovery and other enforcement considerations must be included in a Cooperative Agreement application. Specific provisions that address different enforcement conditions are presented below. These provisions should be reviewed, discussed with the RSPO, and included in the application, as appropriate.

### Notice of Intent to Settle or Initiate Proceedings

> EPA and the State agree that, with respect to the claims that each may be entitled to assert against any third person (herein referred to as the "responsible party," whether one or more) for reimbursement of any services, materials, monies, or other thing of value expended by EPA or the State for response activity at the site described herein, neither EPA nor the State will enter into a settlement with or initiate a judicial or administrative proceeding against, a responsible party for the recovery of such sums except after having given notice in writing to the other party to this Agreement not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings. Neither party to this Agreement shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, and authority to do so is hereby expressly negated and denied.

### Cooperation and Coordination in Cost Recovery Efforts

> EPA and the State agree that they will cooperate and coordinate in efforts to recover their respective costs of response actions taken at the site described herein, including the negotiation of settlement and the filing and management of any judicial actions against potential third parties. This shall include coordination in the use of

evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under the provisions of any applicable State or Federal law or regulation.

## Judicial Action in U.S. District Court

EPA and the State agree that judicial action taken by either party against a potentially responsible party pursuant to CERCLA for recovery of any sums expended in response actions at the site described herein shall be filed in the United States District Court for the judicial district in which the site described in this Agreement is located, or in such other judicial district of the United States District Court as may be authorized by section 113 of CERCLA, and agreed to in writing by the parties of this Agreement.

## Litigation Under CERCLA Sections 106 and 107

The award of this Agreement does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under sections 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or any other statutory provision or common law.

## Sharing Recovered Funds with EPA

[Note: This provision should be used only when EPA has determined that the State has obtained all possible cost recovery or when the State has filed a cost recovery action that EPA has determined should be pursued rather than dismissed.]

Any recovery achieved by the State pursuant to settlement, judgment or consent decree or any action against any of the responsible parties will be shared with EPA in proportion to EPA's contribution to the site response activities under CERCLA.

# APPENDIX G

# SAMPLE COOPERATIVE AGREEMENT APPLICATION PACKAGE

## PURPOSE

This appendix has been included to demonstrate the components of a Cooperative Agreement application package and to assist the State Project Officer (SPO) in compiling all of the necessary information for the submission.

## BACKGROUND

A Cooperative Agreement application package is the set of documents that the State submits to the EPA Region as its formal application for Federal assistance. Applications may be site-specific or they may cover remedial planning projects at more than one site located within a single State. In any case, the package is comprised of the actual Cooperative Agreement application form (EPA Form 5700-33) and in addition should include:

- A narrative description of the site and remedial objectives*
- A statement of work*
- A detailed budget breakdown, presented in more detail than that in the application budget*
- A completed and signed Procurement System Checklist (EPA Form 5700-48)
- Necessary assurances regarding CERCLA section 104(c)(3), if required for completion of the project in question, and provisions addressing other Superfund program requirements
- A letter certifying that the State agency entering into the Cooperative Agreement has authority to do so and to make CERCLA section 104(c)(3) assurances, if any are required for the project

---

* If the Cooperative Agreement application package covers remedial activities at more than one site, the State should submit individual project narratives, statements of work, and budget breakdowns for each proposed activity.

- A copy of State intergovernmental review comments
- A Community Relations Plan.

Together, these documents comprise the Cooperative Agreement application package.

## APPENDIX SUMMARY

This appendix provides an example of a Cooperative Agreement application package for remedial response. The example shown includes all of the documents cited above, except for the following:

- A statement of work
- A Community Relations Plan.

These have not been reproduced here because of space limitations. In addition, because intergovernmental review is a recent requirement, review comments are not included in this appendix.

Most of the example reproduced here has been taken from the Cooperative Agreement package submitted in July 1982 for the Crystal Chemical Company site in Texas. When submitted to EPA, the Crystal Chemical application reflected Superfund program requirements (based on earlier guidance) and was subsequently awarded. Superfund program policies, procedures, and terminology, however, have continued to evolve. Therefore, the Crystal Chemical application form (EPA Form 5700-33) has been replaced with examples showing the recent changes reflected in this guidance document. Provided here are an example of an original application and a sample amendment application to demonstrate procedures which should be used when requesting an increase in funds for existing subactivities and/or money to implement additional subactivities. Other portions of the Crystal Chemical application, however, represent current Superfund program requirements, and therefore can continue to be used as appropriate examples.*

---

* Throughout the elements of the Crystal Chemical application package, the proposed subactivities are referred to as "Site Investigation" and "Feasibility;" these should instead be referred to as one subactivity "Remedial Investigation/Feasibility Study."

This Cooperative Agreement package is provided to serve as a guide only; situations may arise where the requirements of or documents included in this sample package are not applicable to the specific conditions at a site. Representatives of the State should discuss with EPA Regional personnel the specific contents required in each Cooperative Agreement application package prior to submitting the package for EPA review.

# ORIGINAL COOPERATIVE AGREEMENT APPLICATION FORM (5700-33)

STATE AND LOCAL NONCONSTRUCTION PROGRAMS

OMB Approval No. 80-R0180

## FEDERAL ASSISTANCE

1. TYPE OF ACTION (Mark appropriate box)
☐ PREAPPLICATION
☐ APPLICATION
☐ NOTIFICATION OF INTENT (Opt.)
☐ REPORT OF FEDERAL ACTION

2. APPLICANT'S APPLICATION
a. NUMBER
b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER
a. NUMBER
b. DATE ASSIGNED Year month day 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name : Dept. of Health & Environment
b. Organization Unit : Environmental Services Division
c. Street/P.O. Box : Ecology Building, Room 2872
d. City : Hespen
e. County : Lincoln
f. State : Malasee
g. ZIP Code: 00013
h. Contact Person (Name & telephone No.) :

5. FEDERAL EMPLOYER IDENTIFICATION NO.
99-9999999

6. PROGRAM (From Federal Catalog)
a. NUMBER 66.802
b. TITLE Hazardous Substance Response Trust Fund

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT

Joellen's Waste Disposal Site

Remedial Investigation, Feasibility Study, and Initial Remedial Measure

8. TYPE OF APPLICANT/RECIPIENT
A— State
B— Interstate
C— Substate District
D— County
E— City
F— School District
G— Special Purpose District
H— Community Action Agency
I— Higher Educational Institution
J— Indian Tribe
K— Other (Specify):
Enter appropriate letter A

9. TYPE OF ASSISTANCE
A— Basic Grant
B— Supplemental Grant
C— Loan
D— Insurance
E— Other
Enter appropriate letter(s) ☐ A

10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)
Hespen, Lincoln County

11. ESTIMATED NUMBER OF PERSONS BENEFITING
20,000

12. TYPE OF APPLICATION
A— New
B— Renewal
C— Revision
D— Continuation
E— Augmentation
Enter appropriate letter A

13. PROPOSED FUNDING

| | | |
|---|---|---|
| a. FEDERAL | $ 485,100 | .00 |
| b. APPLICANT | 3,900 | .00 |
| c. STATE | | .00 |
| d. LOCAL | | .00 |
| e. OTHER | | .00 |
| f. TOTAL | $ 489,000 | .00 |

14. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT 2
b. PROJECT 5

15. TYPE OF CHANGE (For 12 c or 12 e)
A— Increase Dollars
B— Decrease Dollars
C— Increase Duration
D— Decrease Duration
E— Cancellation
F— Other (Specify):
Enter appropriate letter(s) ☐ ☐ ☐

16. PROJECT START DATE Year month day 19 83 09 01

17. PROJECT DURATION 24 Months

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ▶ Year month day 19

19. EXISTING FEDERAL IDENTIFICATION NUMBER

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)
U.S. EPA, Region VIII, Denver, CO 80295

21. REMARKS ADDED
☒ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ▶
a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached:

| | | No response | Response attached |
|---|---|---|---|
| (1) | | ☐ | ☐ |
| (2) | See Attachment | ☐ | ☐ |
| (3) | | ☐ | ☐ |

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
Heidi M. Kleen, Director
b. SIGNATURE
c. DATE SIGNED Year month day 19 83 08 04

SECTION III—FEDERAL AGENCY ACTION

24. AGENCY NAME

25. APPLICATION RECEIVED Year month day 19

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. DEFERRED
☐ e. WITHDRAWN

32. FUNDING

| | | |
|---|---|---|
| a. FEDERAL | $ | .00 |
| b. APPLICANT | | .00 |
| c. STATE | | .00 |
| d. LOCAL | | .00 |
| e. OTHER | | .00 |
| f. TOTAL | $ | .00 |

33. ACTION DATE ▶ Year month day 19

34. STARTING DATE Year month day 19

35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

36. ENDING DATE Year month day 19

37. REMARKS ADDED
☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.
b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)

*Form Approved*
*OMB No. 158-R0110*

## PART II

## PROJECT APPROVAL INFORMATION

**Item 1.**
Does this assistance request State, local, regional, or other priority rating?

__X__ Yes ______ No

Name of Governing Body __U.S. EPA__
Priority Rating __Hazard Ranking Score__

**Item 2.**
Does this assistance request require State, or local advisory, educational or health clearances?

______ Yes __X__ No

Name of Agency or Board ______
*(Attach Documentation)*

**Item 3.**
Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?

__X__ Yes ______ No

*(Attach Comments)*

**Item 4.**
Does this assistance request require State, local, regional or other planning approval?

______ Yes __X__ No

Name of Approving Agency ______
Date ______

**Item 5.**
Is the proposed project covered by an approved comprehensive plan?

______ Yes __X__ No

Check one: State ☐
Local ☐
Regional ☐
Location of Plan ______

**Item 6.**
Will the assistance requested serve a Federal installation?

______ Yes __X__ No

Name of Federal Installation ______
Federal Population benefiting from Project ______

**Item 7.**
Will the assistance requested be on Federal land or installation?

______ Yes __X__ No

Name of Federal Installation ______
Location of Federal Land ______
Percent of Project ______

**Item 8.**
Will the assistance requested have an impact or effect on the environment?

__X__ Yes ______ No

See instructions for additional information to be provided.

**Item 9.**
Has the project for which assistance is requested caused, since January 1, 1971, or will it cause, the displacement of any individual, family, business, or farm?

______ Yes __X__ No

Number of:
Individuals ______
Families ______
Businesses ______
Farms ______
(Check "Yes" if relocations will occur)

**Item 10.**
Is there other related assistance on this project previous, pending, or anticipated?

______ Yes __X__ No

See instructions for additional information to be provided.
(Check "Yes" if emergencies, planned removals, etc. have occurred, or are expected to occur)

**Item 11.**
Is project in a Designated Flood Hazard Area?

______ Yes __X__ No

(If "Yes," include FEMA number for the area)

Form Approved
OMB No. 158-R0110

## PART III–BUDGET INFORMATION

### SECTION A–BUDGET SUMMARY

| GRANT PROGRAM, FUNCTION OR ACTIVITY (a) | FEDERAL CATALOG NO. (b) | ESTIMATED UNOBLIGATED FUNDS | | NEW OR REVISED BUDGET | | |
|---|---|---|---|---|---|---|
| | | FEDERAL (c) | NON-FEDERAL (d) | FEDERAL (e) | NON-FEDERAL (f) | TOTAL (g) |
| 1. Remedial Planning (RI/FS) | 66-802 | $ | $ | $ 450,000 | $ -0- | $ 450,000 |
| 2. Remedial Implementation (IRM) | 66-802 | | | 35,100 | 3,900 | 39,000 |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ 485,000 | $ 3,900 | $ 489,000 |

### SECTION B–SCHEDULE A BUDGET CATEGORIES

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | TOTAL (5) |
|---|---|---|---|---|---|
| | (1) Planning (RI/FS) | (2) Implementation (IRM) | (3) | (4) | |
| a. Personnel | $ 32,474 | $ 5,000 | $ | $ | $ 37,474 |
| b. Fringe Benefits | 6,495 | 1,000 | | | 7,495 |
| c. Travel | 3,526 | 500 | | | 4,026 |
| d. Equipment | 250 | -0- | | | 250 |
| e. Supplies | 550 | -0- | | | 550 |
| f. Contractual | 400,000 | 31,714 | | | 431,714 |
| g. Construction | -0- | -0- | | | -0- |
| h. Other | 1,600 | -0- | | | 1,600 |
| i. Total Direct Charges | 444,895 | 38,214 | | | 483,109 |
| j. Indirect Charges | 5,105 | 786 | | | 5,891 |
| k. TOTALS 13.1% of S&W | $ 450,000 | $ 39,000 | $ | $ | $ 489,000 |
| ogram Income | $ | $ | $ | $ | $ |

Form Approved
OMB No. 158-R0110

| SECTION B – SCHEDULE B – BUDGET CATEGORIES | | | | |
|---|---|---|---|---|
| 6. Program Elements (See subactivities as defined in Appendix N for Program Elements) | FUNDING | | | (4) MAN-YEARS |
| | (1) FEDERAL | (2) NON-FEDERAL | (3) TOTAL | |
| a. Remedial Investigation / Feasibility Study | $ 450,000 | $ -0- | $ 450,000 | |
| b. Initial Remedial Measure | 35,100 | 3,900 | 35,000 | |
| c. | | | | |
| d. | | | | |
| e. | | | | |
| f. | | | | |
| g. | | | | |
| h. | | | | |
| i. Total Program Elements | $ | $ | $ | |
| j. STATE TOTAL | $ 485,100 | $ 3,900 | $ 489,000 | |

See attached detailed cost breakdown by task.

*Form Approved*
*OMB No. 158 R0110*

## SECTION C–NON-FEDERAL RESOURCES (Leave Blank)

| (a) GRANT PROGRAM | (b) APPLICANT | (c) STATE | (d) OTHER SOURCES | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS | $ | $ | $ | $ |

## SECTION D–FORECASTED CASH NEEDS

| | TOTAL FOR 1st YEAR | 1st QUARTER | 2nd QUARTER | 3rd QUARTER | 4th QUARTER |
|---|---|---|---|---|---|
| 13. Federal | $ 200,000 | $ 59,000 | $ 47,000 | $ 47,000 | $ 47,000 |
| 14. Non-Federal | 3,900 | 3,900 | | | |
| 15. TOTALS | $ 203,900 | $ 62,900 | $ 47,000 | $ 47,000 | $ 47,000 |

## SECTION E–BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) GRANT PROGRAM | FUTURE FUNDING PERIODS (YEARS) | | | |
|---|---|---|---|---|
| | (b) FIRST | (c) SECOND | (d) THIRD | (e) FOURTH |
| 16. Remedial Design | $ 300,000 | $ | $ | $ |
| 17. Remedial Action | | 2,000,000 | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS | $ 300,000 | $ 2,000,000 | $ | $ |

## SECTION F–OTHER BUDGET INFORMATION
*(Attach Additional Sheets If Necessary)*

21. Direct Charges:

22. Indirect Charges: The State of Malasee's indirect cost rate of 13.1% has been negotiated with EPA (see attached).

23. Remarks:

## PART IV–PROGRAM NARRATIVE *(Attach per instruction)*

# APPLICATION FOR COOPERATIVE AGREEMENT AMENDMENT (5700-33)

STATE AND LOCAL NONCONSTRUCTION PROGRAMS

OMB Approval No. 80-R0180

## FEDERAL ASSISTANCE

1. TYPE OF ACTION (Mark appropriate box)
☐ PREAPPLICATION
☐ APPLICATION
☐ NOTIFICATION OF INTENT (Opt.)
☐ REPORT OF FEDERAL ACTION

2. APPLICANT'S APPLICATION
a. NUMBER
b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER
a. NUMBER
b. DATE ASSIGNED Year month day 19

Leave Blank

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name : Dept. of Health & Environment
b. Organization Unit : Environmental Services Division
c. Street/P.O. Box : Ecology Building, Room 2872
d. City : Hespen
e. County : Lincoln
f. State : Malasee
g. ZIP Code : 00013
h. Contact Person (Name & telephone No.)

5. FEDERAL EMPLOYER IDENTIFICATION NO.
99-9999999

6. PROGRAM (From Federal Catalog)
a. NUMBER 6 6 • 8 0 2
b. TITLE Hazardous Substance Response Trust Fund

7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT
Joellen's Waste Disposal Site
Remedial Design and Initial Remedial Measure

8. TYPE OF APPLICANT/RECIPIENT
A— State
B— Interstate
C— Substate District
D— County
E— City
F— School District
G— Special Purpose District
H— Community Action Agency
I— Higher Educational Institution
J— Indian Tribe
K— Other (Specify):
Enter appropriate letter A

9. TYPE OF ASSISTANCE
A— Basic Grant
B— Supplemental Grant
C— Loan
D— Insurance
E— Other
Enter appropriate letter(s) A

10. AREA OF PROJECT IMPACT (Names of cities, counties, States, etc.)
Hespen, Lincoln County

11. ESTIMATED NUMBER OF PERSONS BENEFITING
20,000

12. TYPE OF APPLICATION
A— New
B— Renewal
C— Revision
D— Continuation
E— Augmentation
Enter appropriate letter E

13. PROPOSED FUNDING

| | |
|---|---|
| a. FEDERAL | $304,500 .00 |
| b. APPLICANT | 500 .00 |
| c. STATE | .00 |
| d. LOCAL | .00 |
| e. OTHER | .00 |
| f. TOTAL | $305,000 .00 |

14. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT 2
b. PROJECT 5

15. TYPE OF CHANGE (For 12 c or 12 e)
A— Increase Dollars
B— Decrease Dollars
C— Increase Duration
D— Decrease Duration
E— Cancellation
F— Other (Specify):
Enter appropriate letter(s) A C

16. PROJECT START DATE Year month day 19 85 09 01

17. PROJECT DURATION 6 Months

18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY ► Year month day 19 85 07 26

19. EXISTING FEDERAL IDENTIFICATION NUMBER
CX 821001-01-0

20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code)
U.S. EPA Region VIII, Denver, CO 80295

21. REMARKS ADDED
☑ Yes ☐ No

SECTION I—APPLICANT/RECIPIENT DATA

22. THE APPLICANT CERTIFIES THAT ►
a. To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
b. If required by OMB Circular A-95 this application was submitted, pursuant to instructions therein, to appropriate clearinghouses and all responses are attached:

| | | No response | Response attached |
|---|---|---|---|
| (1) | See Attachment | ☐ | ☐ |
| (2) | | ☐ | ☐ |
| (3) | | ☐ | ☐ |

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE Heidi M. Kleen, Director
b. SIGNATURE
c. DATE SIGNED Year month day 19

SECTION II—CERTIFICATION

24. AGENCY NAME

25. APPLICATION RECEIVED Year month day 19 85 07 25

26. ORGANIZATIONAL UNIT

27. ADMINISTRATIVE OFFICE

28. FEDERAL APPLICATION IDENTIFICATION

29. ADDRESS

30. FEDERAL GRANT IDENTIFICATION

31. ACTION TAKEN
☐ a. AWARDED
☐ b. REJECTED
☐ c. RETURNED FOR AMENDMENT
☐ d. DEFERRED
☐ e. WITHDRAWN

32. FUNDING

| | |
|---|---|
| a. FEDERAL | $ .00 |
| b. APPLICANT | .00 |
| c. STATE | .00 |
| d. LOCAL | .00 |
| e. OTHER | .00 |
| f. TOTAL | $ .00 |

33. ACTION DATE ► Year month day 19

34. STARTING DATE Year month day 19

35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

36. ENDING DATE Year month day 19

37. REMARKS ADDED
☐ Yes ☐ No

38. FEDERAL AGENCY A-95 ACTION
a. In taking above action, any comments received from clearinghouses were considered. If agency response is due under provisions of Part 1, OMB Circular A-95, it has been or is being made.
b. FEDERAL AGENCY A-95 OFFICIAL (Name and telephone no.)

SECTION III—FEDERAL AGENCY ACTION

424-102

STANDARD FORM 424 PAGE 1 (Rev. 4-77)
Prescribed by OMB Circular A-102

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(This form is not required unless item 9 or 10 is changed, e.g., relocation or emergency action at site)

*Form Approved*
*OMB No. 158-R0110*

## PART II

## PROJECT APPROVAL INFORMATION

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**Item 1.**
Does this assistance request State, local, regional, or other priority rating?

________ Yes ________ No

Name of Governing Body ________
Priority Rating ________

---

**Item 2.**
Does this assistance request require State, or local advisory, educational or health clearances?

________ Yes ________ No

Name of Agency or Board ________
*(Attach Documentation)*

---

**Item 3.**
Does this assistance request require clearinghouse review in accordance with OMB Circular A-95?

________ Yes ________ No

*(Attach Comments)*

---

**Item 4.**
Does this assistance request require State, local, regional or other planning approval?

________ Yes ________ No

Name of Approving Agency ________
Date ________

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**Item 5.**
Is the proposed project covered by an approved comprehensive plan?

________ Yes ________ No

Check one: State ☐
Local ☐
Regional ☐
Location of Plan ________

---

**Item 6.**
Will the assistance requested serve a Federal installation?

________ Yes ________ No

Name of Federal Installation ________
Federal Population benefiting from Project ________

---

**Item 7.**
Will the assistance requested be on Federal land or installation?

________ Yes ________ No

Name of Federal Installation ________
Location of Federal Land ________
Percent of Project ________

---

**Item 8.**
Will the assistance requested have an impact or effect on the environment?

________ Yes ________ No

See instructions for additional information to be provided.

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**Item 9.**
Has the project for which assistance is requested caused, since January 1, 1971, or will it cause, the displacement of any individual, family, business, or farm?

________ Yes ________ No

Number of:
Individuals ________
Families ________
Businesses ________
Farms ________

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**Item 10.**
Is there other related assistance on this project previous, pending, or anticipated?

________ Yes ________ No

See instructions for additional information to be provided.

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**Item 11.**
Is project in a Designated Flood Hazard Area?

________ Yes ________ No

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## PART III–BUDGET INFORMATION

### SECTION A–BUDGET SUMMARY

| GRANT PROGRAM, FUNCTION OR ACTIVITY (a) | FEDERAL CATALOG NO. (b) | ESTIMATED UNOBLIGATED FUNDS FEDERAL (c) | ESTIMATED UNOBLIGATED FUNDS NON-FEDERAL (d) | NEW OR REVISED BUDGET FEDERAL (e) | NEW OR REVISED BUDGET NON-FEDERAL (f) | NEW OR REVISED BUDGET TOTAL (g) |
|---|---|---|---|---|---|---|
| 1. Planning (RI/FS)(Old) | 66-802 | $ | $ | $ 450,000 | $ -0- | $ 450,000 |
| 2. Implem. (IRM) (Old) | 66-802 | | | 35,100 | 3,900 | 39,000 |
| 3. Planning (Design)(New) | 66-802 | | | 300,000 | -0- | 300,000 |
| 4. Implem. (IRM) (New) | 66-802 | | | 4,500 | 500 | 5,000 |
| 5. TOTALS | | $ | $ | $ 789,600 | $ 4,400 | $ 794,000 |

### SECTION B–SCHEDULE A BUDGET CATEGORIES

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) Planning (Design) | (2) Implementation (IRM) | (3) | (4) | TOTAL (5) |
|---|---|---|---|---|---|
| a. Personnel | $ 14,074 | $ -0- | $ | $ | $ 14,074 |
| b. Fringe Benefits | 2,745 | -0- | | | 2,745 |
| c. Travel | 1,264 | -0- | | | 1,264 |
| d. Equipment | 84 | -0- | | | 84 |
| e. Supplies | 185 | -0- | | | 185 |
| f. Contractual | 278,907 | 5,000 | | | 283,907 |
| g. Construction | -0- | -0- | | | -0- |
| h. Other | 538 | -0- | | | 538 |
| i. Total Direct Charges | 297,797 | 5,000 | | | 302,797 |
| j. Indirect Charges | 2,203 | -0- | | | 2,203 |
| k. TOTALS | $ 300,000 | $ 5,000 | $ | $ | $ 305,000 |
| 7. Program Income | $ | $ | $ | $ | $ |

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## SECTION B – SCHEDULE B – BUDGET CATEGORIES

| 6. Program Elements | FUNDING | | | (4) MAN-YEARS |
|---|---|---|---|---|
| | (1) FEDERAL | (2) NON-FEDERAL | (3) TOTAL | |
| a. Remedial Investigation/ Feasibility Study (Old) | $ 450,000 | $ -0- | $ 450,000 | |
| b. Initial Remedial Measure | 35,100 | 3,900 | 39,000 | |
| c. Remedial Design (New) | 300,000 | -0- | 300,000 | |
| d. Initial Remedial Measure (New) | 4,500 | 500 | 5,000 | |
| e. | | | | |
| f. | | | | |
| g. | | | | |
| h. | | | | |
| i. Total Program Elements | $ | $ | $ | |
| j. STATE TOTAL | $ 789,600 | $ 4,400 | $ 794,000 | |

See attached detailed cost breakdown by task.

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## SECTION C–NON-FEDERAL RESOURCES (Leave Blank)

| (a) GRANT PROGRAM | (b) APPLICANT | (c) STATE | (d) OTHER SOURCES | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS | $ | $ | $ | $ |

## SECTION D–FORECASTED CASH NEEDS

| | TOTAL FOR 1st YEAR | 1st QUARTER | 2nd QUARTER | 3rd QUARTER | 4th QUARTER |
|---|---|---|---|---|---|
| 13. Federal | $ 304,500 | $ 204,500 | $ 100,000 | $ | $ |
| 14. Non-Federal | 500 | 500 | | | |
| 15. TOTALS | $ 305,000 | $ 205,000 | $ 100,000 | $ | $ |

## SECTION E–BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) GRANT PROGRAM | FUTURE FUNDING PERIODS (YEARS) | | | |
|---|---|---|---|---|
| | (b) FIRST | (c) SECOND | (d) THIRD | (e) FOURTH |
| 16. Remedial Action | $ 2,000,000 | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS | $ 2,000,000 | $ | $ | $ |

## SECTION F–OTHER BUDGET INFORMATION

*(Attach Additional Sheets If Necessary)*

21. Direct Charges:

22. Indirect Charges: The State of Malasee's indirect cost rate of 13.1% has been negotiated with EPA (see attached).

23. Remarks:

**PART IV–PROGRAM NARRATIVE** *(Attach per instruction)*

# NARRATIVE

## CRYSTAL CHEMICAL CO., SITE HISTORY AND INVESTIGATION OBJECTIVES

### Background

The Rogerdale Road facilities of the Crystal Chemical Company located near Alief in Harris County were constructed in 1968. The plant produced arsenic based herbicides such as monosodium methylarsenate (MSMA) along with a wide spectrum of phenolic and amine based herbicides. The arsenic based product of MSMA along with the raw materials required for its production, are the major sources of the problems at Crystal.

During the plant operations, both raw and finished containerized materials were stored in the open, on the ground. These materials subsequently spilled/leaked into the surface soils. In addition, the spread of arsenic materials outside of the process areas occurred in June, 1976, when rainfall events caused the wastewater ponds to overflow the plant site.

Although the perimeter dikes initially contained the wastewater on site, subsequent sampling indicated overflows and seepage to the adjacent drainage ditches which discharged into Brays Bayou. These discharges of arsenic waste water led to litigation between the State and Crystal Chemical Company. To solve the wastewater problems the company applied to the Department for an injection well permit in September 1978. The Department requested proof of subsurface ownership which Crystal supplied in the summer of 1979. The hearing on the application convened March 11, 1980 and closed on July 31, 1981. In October 1981, Crystal declared bankruptcy under Chapter 7. The site was left flooded with arsenic contaminate wastewaters.

### Present Status

An emergency action by EPA 1) dewatered the site, 2) filled in the ponds with contaminated soils, 3) temporarily capped most of the plant site with 6 inches of clay, and 4) added topsoil and seed. Currently, ground water and surface water contamination has been recorded at the site. It is anticipated that erosion of the clay cap could create an air problem of arsenic dust particles.

### Investigation/Feasibility Plan Objectives

The objectives of the investigation study are to:

1. Identify target receptors (population at risk, sensitive ecosystem, threatened resources).
2. Establish rate and direction of migration (if any) of wastes from site.
3. Determine local geological conditions, hydrology and site suitability.

4. Establish waste characteristics and volumes in order to determine possibilities for reuse, treatment or destruction.

The objectives of the feasibility study are to:

1. Develop and evaluate alternative viable remedial measures considering economic feasibility, technological feasibility, environmental impacts, regulatory constraints and timeliness of completion.
2. Develop technological feasibility through data review and bench/pilot testing.
3. Determine operations and maintenance options (including costs) for the alternative remedial measures considered.

## Structure of Program

The remedial investigation activities described in the attached work scope will be undertaken by the Department directly or by contract. No major deviation from this work plan is expected. However, during the course of the project, some changes may be required as each activity is completed and more is learned about the condition of the site. Such changes in the work plan must be approved by the Department and EPA. Only changes which are considered to be significant by the Department and EPA Project Officers will require an Amendment to this Cooperative Agreement. EPA and the Department each agree not to release any information gathered or decisions made as a result of the investigation activities carried out pursuant to this Agreement prior to consultation with the other party.

This program includes extensive review of existing data, followed by identification of missing data elements prior to actual data collection and evaluation. Following the submission of the site investigation report, a decision will be made by EPA in consultation with the State as to the severity of the problem and the need for further actions at this site. If problems are identified, the EPA will notify the State to proceed with specific feasibility studies designed to address said problems.

## Authorization to Execute Cooperative Agreements and Contracts

The 67th Texas Legislature enacted Subchapter H into the Texas Water Code, authorizing the Texas Department of Water Resources (the Department), to enter into contracts and cooperative agreements with the federal government, to carry out removal and remedial actions under Sections 104(c)(3) and 104(d)(1) of CERCLA. Subchapter H also established the Disposal Facility Response Fund, currently at 5.6 million dollars, to provide for the State's required matching funding. In addition, Subchapter H also authorizes and requires the Department:

1. To assure future maintenance of the removal and remedial actions provided for the expected life of those actions as determined by the federal government;

2. To assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances, pollutants, or contaminants; and

3. To assure payment by the State of:

   a. 10 percent of the costs of the remedial actions, including future maintenance; or

   b. at least 50 percent or more of the costs as determined appropriate by the federal government, taking into account the degree of responsibility of the State for any amount spent in response to a release at a disposal facility that was owned by the State at the time of disposal of hazardous substances at the disposal facility.

Finally by letter of February 8, 1982, to Dick Whittington, Regional Administrator, USEPA Region VI, Governor Clements formally designated the Department as the lead agency authorized to enter into cooperative agreements and contracts under Section 104 of CERCLA. Copies of Subchapter H, the Department's appropriations relating to the Disposal Facility Response Fund and Governor Clements' February 8, 1982 letter are enclosed as Attachment I.

## Administrative and Managerial Commitments

The Texas Department of Water Resources (the Department) is the designated State agency responsible for implementing the Cooperative Agreement for the Crystal Chemical Co. site. The Department is responsible for the execution, administration and management of the Cooperative Agreement and for the performance of the activities as described in the work scope of the Agreement. The Department will subcontract, in compliance with applicable federal and State procurement regulations, the performance of the activities as necessary to accomplish the objectives of the work scope. The Department will comply with and/or will require contractors and subcontractors to comply with any applicable general grant regulations (40 CFR 30).

In the site investigation and feasibility work addressed under this Cooperative Agreement the Department will:

1. Conduct the activities of this Cooperative Agreement in a manner consistent with the existing National Contingency Plan (NCP), 40 CFR Part 300, published July 16, 1982.

2. Adequately document the costs incurred in undertaking the activities described in this Agreement and otherwise support EPA's cost recovery efforts. Except in conjunction with the other party, neither party to this agreement will initiate a cost recovery action against or enter compromise negotiations with a responsible entity. If either party refuses to join in such action or compromise negotiations, however, the other party may proceed unilaterally 30 days after giving written notice of its intention to do so to the refusing party.

3. Prior to initiation of work at the site, require a Safety Plan be developed for the investigation activities to protect the health and safety of the personnel. This Safety Plan must be consistent with Section 104(f) of CERCLA, EPA Order 1440.2 and the EPA Occupational Health and Safety Manual. In awarding contracts to persons to carry out the tasks in the work plan, the State will require the contractors and subcontractors to comply with the Safety Plan as a condition of the contract.

4. Develop and implement a Community Relations Plan consistent with the Superfund Community Relations Policy and Guidance (November 18, 1981). The Plan, as it pertains to activities through the investigation phase, will be developed and in place before the investigation study begins. This Plan will be submitted to the EPA Project Officer within 30 days of the date of award acceptance.

5. Require that the Department's "Quality Assurance Program Plan" and "Chain of Custody" procedures (Attachments II and III respectively) be utilized for all activities performed under this Cooperative Agreement to assure that data generated by or for the Department under this Cooperative Agreement will be of sufficient or greater quality to withstand scientific and legal challenge.

6. Secure any necessary State and federal permits, not limited to those pertaining to treatment, storage, or disposal of wastes from the site, provided such permits are available.

7. Arrange access to the site, as well as all rights-of-way and easements that may be necessary to satisfactorily complete the planned response actions.

## TIME AND PERSONNEL SCHEDULES

### Time and Personnel Schedules

The time schedule presented in this application begins following the execution of a contract between the Department and the selected subcontractor. It is estimated that it will take approximately 120 days from the date of award until a contract is negotiated with the selected subcontractor. In the interim, the Department will initiate certain chargeable management activities and work tasks necessary to comply with the Cooperative Agreement.

The Department will provide the following personnel to complete the management and work tasks needed to sucessfully complete this project.

Unit Head - First line supervisor who supplies technical and administrative guidance on direction of project as well as on specific problems involving project.

Project Manager - Engineer or Hydrologist charged with maintaining technical integrity of project. Prepares technical contract specifications, reviews technical proposals and will assist project on-scene coordinator.

Contract Manager - Fiscal specialist charged with ensuring that all applicable State and federal procurement regulations, as well as the federal grant regulations are followed by the contractor. Audits contractor records, insures timeliness and fiscal accuracy of reports, purchases State equipment, maintains equipment documentation files and maintains contractor services documentation files.

Community Relations Officer - Hydrologist responsible for developing and implementing community relations plans. Keeps informed as to the progress of project (technical and fiscal). Prepares briefings and status reports for officials, coordinates press releases with EPA and answers questions from interested parties.

Legal Clerk - Attorney responsible for determining site ownership and for coordinating enforcement issues with EPA. Insures procedures can withstand legal challenge.

Clerical - Administrative Technician/Legal Secretary responsible for clerical support for reports, work tasks and documentation.

On Scene Coordinator - Engineer or hydrologist responsible for day to day on-site monitoring of contractor performance with respect to adherence to work plan, safety plan and quality assurance plan, and prepare daily reports of contractor activity.

Assistant On Scene Coordinator - Engineer or hydrologist responsibile for assisting the on scene coordinator with on-site monitoring of contractor performance.

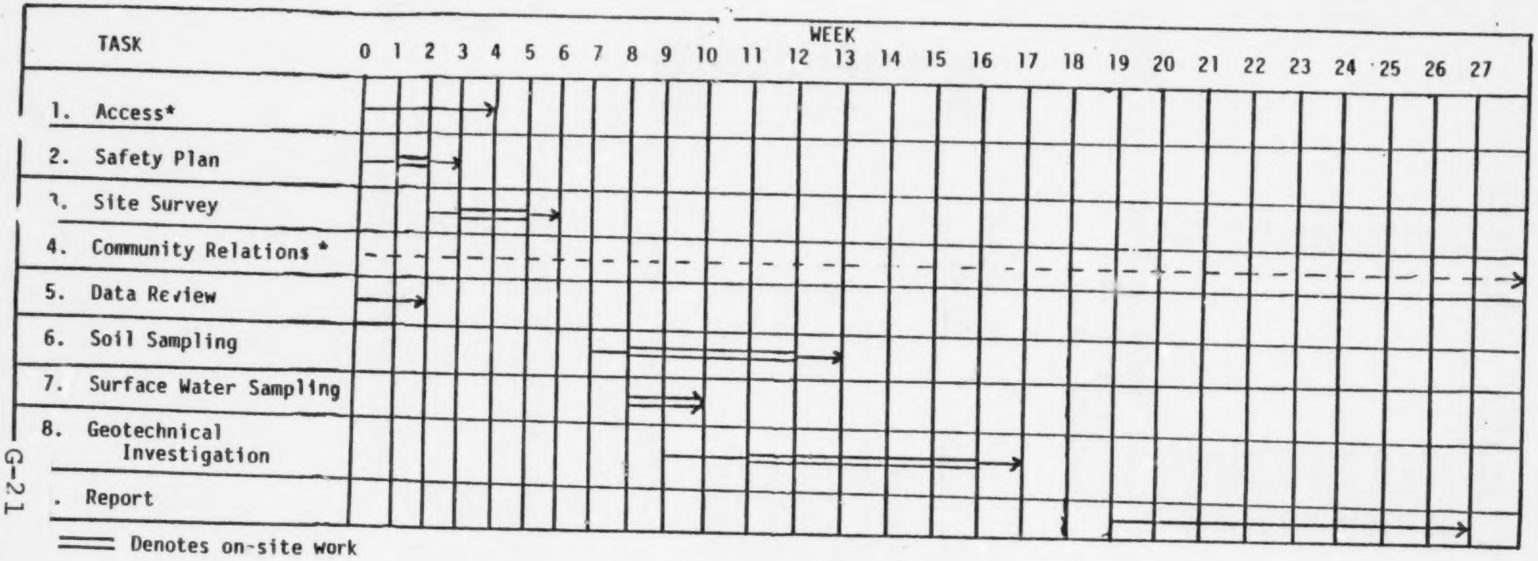
Each individual will charge the actual time spent working directly on this project to the grant. The Unit Head will only charge the time spent managing this specific project.

The administrative aspects of the agency procurement systems, computerized accounting systems, staff support systems and supervisory levels above the Unit Head are not included as direct costs.

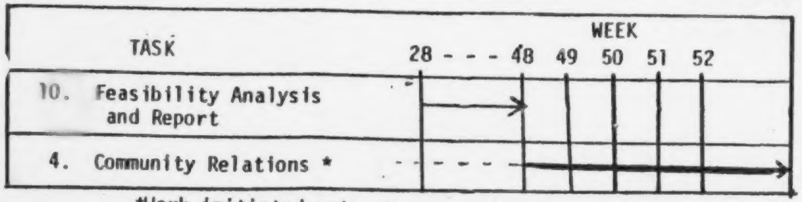
# STATEMENT OF WORK

The State should use either the model statement of work presented in Appendix E to develop the SOW in its Cooperative Agreement application or, for RI/FS applications, the SOW included in the RAMP (if one has been developed for the site). Although the level of detail and contents of the SOW will vary, depending on the requirements of the site, the model can serve as a basis from which to start. The RSPO and other Regional staff are available to assist the State in determining the content and scope of its individual SOW.

## ESTIMATED TIME SCHEDULE FOR SITE INVESTIGATION
## (TO BE IMPLEMENTED AFTER CONTRACT EXECUTED WITH CONSULTANT)



## ESTIMATED TIME SCHEDULE FOR FEASIBILITY STUDIES
## (TO BE IMPLEMENTED AFTER CONTRACT EXECUTED WITH CONSULTANT)



*Work initiated prior to execution of consultant contract.

# DETAILED BUDGET BREAKDOWN

## COST BREAKDOWN - CRYSTAL CHEMICAL CO. SITE

### Site Investigation

### PERSONNEL COSTS

Management Activities

| Position Title | Annual Salary | Man-Years | Cost |
|---|---|---|---|
| Hydrologist IV | $30,744 | .11 | $ 3,381.84 |
| Hydrologist/Eng. III | 32,844 | .23 | 7,554.12 |
| Hydrologist/Eng. III | 32,844 | .16 | 5,255.04 |
| Hydrologist/Eng. III | 32,844 | .06 | 1,970.64 |
| Hydrologist/Eng. III | 32,844 | .06 | 1,970.64 |
| Hydrologist/Eng. I | 26,088 | .16 | 4,174.08 |
| Admin. Tech IV | 25,248 | .10 | 2,524.80 |
| Hydrologist II | 28,800 | .18 | 5,184.00 |
| Legal Clerk IV | 26,952 | .14 | 3,773.28 |
| Admin. Tech I | 14,052 | .06 | 843.12 |
| | Total Personnel Cost | | $36,631.56 |
| | Fringe Benefits | | 9,157.89 |
| | Indirect Costs | | 17,264.45 |

### TRAVEL COSTS

| Title | Origin/Destination | No. Round Trips | Cost |
|---|---|---|---|
| Hydrologist/Eng. III | Austin/Houston | 5 | $ 725 |
| Hydrologist IV | Austin/Houston | 2 | 330 |
| Hydrologist/Eng. III | Austin/Houston | 8 | 2,750 |
| Hydrologist/Eng. I | Austin/Houston | 6 | 2,550 |
| Hydrologist II | Austin/Houston | 5 | 725 |
| Legal Clerk | Austin/Houston | 3 | 495 |
| Admin. Tech IV | Austin/Houston | 2 | 330 |
| Vehicle rental/fuel | | | 2,000 |
| | Total Travel Costs | | $9,905 |

### EQUIPMENT COSTS

| Equipment | Daily Usage Fee | No. Days | Cost |
|---|---|---|---|
| Air packs (2) | $ 5 (2) | 60 | $ 600 |
| Containment suits (2) | $10 (2) | 60 | 1,200 |
| Air sampling kit (1) | $20 | 60 | 1,200 |
| | Total Equipment Costs | | $3,000 |

## SUPPLIES COST

| | | |
|---|---|---|
| Postage | | $ 500 |
| Locks (6) | | 50 |
| Disposable safety equipment (40 man-days) | | 3,000 |
| Camera | | 200 |
| Fire Extenguisher | | 50 |
| Chemical Manuals (2) | | 100 |
| Sampling Equipment: | sample jars 25<br>sample vials 50<br>teflon liners 50<br>bailers (6) 300<br>sample tags 25<br>packaging 150 | 600 |
| | Total Supplies Costs | $4,500 |

## OTHER COSTS

| | | |
|---|---|---|
| Publication/Document Fees | | $1,000 |
| Reproduction | | 800 |
| Long Distance Telephone | | 1,200 |
| | Total Other Costs | $3,000 |

## CONTRACTUAL COSTS

| | | |
|---|---|---|
| Facilities (offices, equipment. station) & Services (water, utilities, etc.) | | $ 22,600 |
| Worker Safety Plan | | 6,250 |
| Site Survey | | 4,600 |
| Determine depth of soils contamination | | 6,500 |
| Establish Surface Water Quality | | 5,000 |
| Geotechnical Investigation | | 168,999 |
| Report Findings | | 20,000 |
| | Total Contractual Costs | $233,949 |

TOTAL COST SITE INVESTIGATION $317,408

## Feasibility

### PERSONNEL COSTS

Management Activities

| Position Title | Annual Salary | Man-Years | Cost |
|---|---|---|---|
| Hydrologist IV | $32,844 | .08 | $ 2,627.52 |
| Hydrologist/Eng. III | 30,744 | .25 | 7,686.00 |
| Admin. Tech I | 14,502 | .08 | 1,160.16 |
| Admin. Tech IV | 25,248 | .18 | 4,544.64 |
| | | | $16,018.32 |
| | Fringe Benefits (25%) | | 4,004.58 |
| | Indirect Costs (47.13%) | | 7,549.43 |

Work Tasks

| Position Title | Annual Salary | Man-Years | Cost |
|---|---|---|---|
| Legal Clerk IV | $26,952 | .05 | $1,347.60 |
| Legal Secreatry | 14,508 | .01 | 145.08 |
| Hydrologist II | 28,800 | .10 | 2,880.00 |
| Admin. Tech I | 14,052 | .04 | 146.14 |
| | | | $4,518.82 |
| | Fringe Benefits (25%) | | 1,129.71 |
| | Indirect Costs (47.13%) | | 2,129.72 |

| | |
|---|---|
| Total Personnel Cost | $20,537.14 |
| Total Fringe Benefit | $ 5,134.29 |
| Total Indirect Costs | $ 9,679.15 |

### TRAVEL COSTS

| Title | Origin/Destination | No. Trips | Cost w/per diem |
|---|---|---|---|
| Hydro/Eng. III | Austin/Houston | 3 | $ 450.00 |
| Hydro II | Austin/Houston | 2 | 300.00 |
| Vehicle rental/fuel | | | 650.00 |
| | Total Travel Costs | | $1,400.00 |

### EQUIPMENT COSTS

| Equipment | Daily Useage Fee | No. Days | Cost |
|---|---|---|---|
| Airpacks (2) | $ 5 (2) | 5 | $ 50 |
| Containment suits (2) | $10 (2) | 5 | $100 |
| Air Sampling kit (1) | $20 | 5 | $100 |
| | Total Equipment Costs | | $250 |

## SUPPLIES COSTS

| | | |
|---|---|---|
| Disposable Safety equipment (10 Man-Days) | | $750.00 |
| Postage | | 100.00 |
| | Total Supplies Costs | $850.00 |

## OTHER COSTS

| | | |
|---|---|---|
| Publication/Document Fees | | $1,000.00 |
| Reproduction | | 500.00 |
| Long Distance telephone | | 700.00 |
| | Total Other Costs | $2,200.00 |

## CONTRACTUAL COSTS

| | | |
|---|---|---|
| Data and Literature Review | | $ 5,200.00 |
| Bench/Pilot Testing | | 33,341.52 |
| Cost Analyses | | 5,000.00 |
| Report | | 10,000.00 |
| | Total Contractual Costs | $53,541.52 |
| | TOTAL FEASIBILITY STUDY | $93,592.10 |

# PROCUREMENT SYSTEM CHECKLIST

*Form Approved*
*OMB No. 2000-0453*
*Expires 4-84*

## SECTION I - INSTRUCTIONS

This form must accompany each application for EPA Assistance. If the applicant has certified its procurement system to EPA within the past two years and the system has not been substantially revised, complete Part A in Section II, then sign and date the form. If the [illegible] has not been certified within the past two years, complete Part B.

## SECTION II - CERTIFICATION

| | |
|---|---|
| A. I affirm that the applicant has within the past two years certified its procurement system to EPA as complying with 40 CFR Part 33 and that the system has not been substantially revised. The date of the applicant's latest certification is: | MONTH/YEAR |

B. Based upon my evaluation of the applicant's procurement system, I, as authorized representative of the applicant: *(Check one of the following:)*

☐ 1. CERTIFY that the applicant's procurement system will meet all of the requirements of 40 CFR Part 33 including the attached subparts before undertaking any procurement action with EPA assistance.

Please furnish citations to applicable State or local ordinances and regulations.

☒ 2. DO NOT CERTIFY. The applicant will follow the requirements of 40 CFR Part 33 with EPA review and preaward approval of proposed procurement actions that will use EPA assistance.

| TYPED NAME & TITLE OF CHIEF EXECUTIVE OFFICER | SIGNATURE | DATE |
|---|---|---|
| Harvey Davis, Executive Director | Harvey Davis | 8/30/82 |

Below is a list of subparts and sections of 40 CFR Part 33 which contain some but not all of the requirements for procurements under EPA assistance. The purpose of this list is to assist in the evaluation of the applicant's procurement system to determine if it is certifiable and meets the basic procurement principles as articulated in Part 33. As such, this list highlights certain aspects of the regulations which the recipient shall use in its evaluation process and is not intended to replace a detailed reading of Part 33.

| PART 33 REFERENCE | SECTION TITLE - SUMMARY OF REQUIREMENTS |
|---|---|
| 33.210 | SUBAGREEMENT ADMINISTRATION - System must ensure that contractors perform in accordance with all applicable contract requirements. |
| 33.220 | LIMITATION ON RECIPIENT AWARD - System must consider listed factors in determining contractor responsibility. |
| 33.230 | COMPETITION - System must have procurement transaction procedures that provide maximum open and free competit |

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| | |
|---|---|
| 33.235 | PROFITS - System prc[illegible]ures must allow only fair and reasonable profi[illegible] contractors. |
| 33.240 | SMALL, MINORITY, WOMEN'S, AND LABOR SURPLUS AREA BUSINESSES - System must provide for use of these businesses as specified in this section. |
| 33.250 | DOCUMENTATION - System must require that procurement records and files for purchases over $10,000 include items specified in this section. |
| 33.255 | SPECIFICATIONS - System procedures for establishing specifications for products or services to be procured must meet requirements of this section. |
| 33.265 | BONDING AND INSURANCE - System procedures and requirements related to bonding and insurance must meet requirements of this section. |
| 33.270 | CODE OF CONDUCT - System must have a written code or standards of conduct meeting the requirements of this section. |
| 33.275 | FEDERAL COST PRINCIPLES - System procedures for determining allowable costs must comply with the cost principles specified in this section. |
| 33.285 | PROHIBITED TYPES OF CONTRACTS - System may not allow use of cost-plus-percentage-of cost (multiplier) or percentage-of-construction-cost types of contracts. |
| 33.290 | COST AND PRICE CONSIDERATIONS - System procedures must allow for consideration of cost and price as required in this section. |
| 33.295 | LOWER TIER SUBAGREEMENTS - System must provide that subagreements below the first tier comply with all provisions specified in this section. |
| 3.305-310 | SMALL PURCHASE - System small purchase procedures must meet requirements of these sections. |
| 33.405-435 | FORMAL ADVERTISING - System procedures related to formal advertising, including those for bidding documents and contract awards, must meet the requirements of these sections. |
| 33.505-535 | COMPETITIVE NEGOTIATION - System procedures for competitive negotiation must meet the requirements of these sections. |
| 33.605 | NONCOMPETITIVE NEGOTIATION System procedures for noncompetitive negotiation must meet the requirements of this section. |
| SUBPARTS C - G | SYSTEM MUST COMPLY WITH REQUIREMENTS IN THESE SUBPARTS: |
| C | CLEAN WATER ACT REQUIREMENTS - Subpart applies to procurement under assistance agreements for construction of treatment works under the Clean Water Act. |
| D | REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT ORGANIZATIONS Subpart describes the procurement requirements for nonprofit organizations. |
| E | REQUIREMENTS FOR RECIPIENTS OF REMEDIAL ACTION COOPERATIVE AGREEMENTS UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980 - Subpart describes the additional procurement requirements for recipients of these cooperative agreements. |
| F | SUBAGREEMENT PROVISIONS - Subagreements for procurement under EPA Assistance must contain the appropriate clauses, or their equivalent, specified in this subpart. |
| G | PROTESTS - Subpart applies to all applicants for EPA assistance except for nonprofit organizations. |

EPA Form 5700-48 (5-82) Reverse

# STATE ASSURANCES

## Operation and Maintenance *

If, following the site feasibility studies, part or all of the remedy selected requires operation and maintenance (O & M), the Department assures the future O & M of the selected remedial action(s) implemented at the Crystal Chemical Company for the expected life of those actions provided:

1. The Department is consulted during the remedy selection process and agrees in writing that the selected remedy is technologically and economically feasible;
2. The EPA notifies the Department in writing as to the expected life of each remedy considered prior to remedy selection; and
3. The EPA shares in those costs associated with ensuring that the remedy is functional and operational for a period of six months after completion of construction. Funding for this six month period will be specified in the Cooperative Agreement for the Design Phase.

## Availability of Off-Site Facilities *

If the State and EPA determine that off-site treatment, storage or disposal is required, the State will identify in the application for an amendment authorized hazardous waste disposal facilities that have adequate capacity and are able and willing to receive the hazardous substances designated for off-site storage, treatment or disposal. The hazardous waste facilities selected by the State must be acceptable to EPA and must, at a minimum, be in compliance with the requirements of Subtitle C of the Solid Waste Disposal Act.

## Cost Share Provisions **

The Department will pay 10 percent of the costs of the activities performed under this Cooperative Agreement. The State's estimated share will be $30,100 for site investigation and $10,000 for site feasibility studies. The actual cost will be computed by adding the State's budget for management activities and work tasks to the negotiated amount for the contractual activities necessary to perform the work scope.

The method of payment for the State's matching share will be cash payment to the contractor(s) for satisfactorily completed work products. The actual payment schedule will be detailed in the contract between the Department and the subcontractor(s). Documentation of these transactions will be provided to EPA as proof of payment by the State. In no event will the federal cost exceed 90% of the final project cost and any remaining unexpended federal funds will be reported to the EPA so that EPA may:

1. Apply these toward the next budget period's costs, or
2. Deobligate these funds and adjust the letter of credit accordingly.

---

* Assurance not required until after completion of feasibility study.

** Cost-sharing no longer required for remedial planning at privately-owned sites.

# CERTIFICATION LETTER

OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711

WILLIAM P. CLEMENTS, JR.
GOVERNOR

February 8, 1982

Mr. Dick Whittington, Regional Administrator
U.S. Environmental Protection Agency
Region VI
1201 Elm Street
Dallas, Texas 75270

Dear Mr. Whittington:

In response to your letter concerning the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), I want to take this opportunity to formally designate the Texas Department of Water Resources as the lead agency authorized to enter into cooperative agreements and contracts under Section 104 of CERCLA. Historically, the Texas Department of Water Resources has been the state agency responsible for monitoring and regulating hazardous waste sites. I have every confidence that this agency and the Environmental Protection Agency can continue to maintain the cooperative working relationship that has been established. Additionally, the Department can facilitate any appropriate communications with other state agencies relative to the Act.

Again, I appreciate the opportunity to formally designate the Texas Department of Water Resources as Texas' lead agency in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

If I can be of any further assistance, please let me know.

Sincerely,

Bill Clements

William P. Clements, Jr.
Governor of Texas

ms

cc Mr. Harvey D. Davis, Executive Director
Texas Department of Water Resources

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# APPENDIX H

## SAMPLE ARTICLES FOR SUPERFUND STATE CONTRACTS AND OTHER EPA-LEAD AGREEMENTS

### PURPOSE

This appendix has been provided to assist Regional Site Project Officers (RSPOs) and State Project Officers (SPOs) in developing articles for Superfund State Contracts (SSCs) and other EPA-lead agreements.

### BACKGROUND

Remedial response activities may be managed by either the State or EPA. If the State assumes lead responsibility for remedial work at a site, EPA and the State will enter into a Cooperative Agreement for all phases of the work (see Appendices F and G). Conversely, if EPA retains lead management responsibility, the type of agreement entered into will depend upon the nature of the activities to be undertaken and the need for the State to make CERCLA section 104(c)(3) assurances.

The SSC is a legally-binding agreement between EPA and the State which documents both parties' responsibilities for a remedial project and provides any necessary assurances. An SSC will be used when the project in question requires the State to provide cost-sharing and/or other CERCLA section 104(c)(3) assurances. Projects requiring SSCs, then, will involve performance of remedial implementation subactivities, including initial remedial measures.

EPA-lead remedial planning does not require the use of a legal agreement vehicle. Rather, a letter from the State requesting that EPA undertake the subactivities in question and generically approving planning at the site will in many cases be sufficient to initiate these remedial subactivities. At the discretion of Regional and State officials, however, it may be found preferable to use a more formal agreement vehicle to define the project and EPA and State responsibilities for its conduct. In these cases, EPA and the State may enter into a Memorandum of Understanding (MOU). Because recent EPA policy defers the provision of a State's cost share for remedial planning at a publicly-owned site until the implementation of a remedial action at that site, such planning projects may be covered by MOUs.

Like the SSC, an MOU documents both parties' responsibilities for the remedial project to be undertaken; it is, however, not a legally-binding agreement. For this reason, an MOU must only be used for projects which do not require the State to make the assurances detailed in section 104(c)(3) of CERCLA.

Responsibilities under an SSC are documented in articles to the agreement; these can be of two types:

- General contractual articles that outline the basic purpose, scope, and administration of the agreement
- Superfund program articles that address Superfund-imposed requirements.

Such articles will also be negotiated for an MOU, if they are found to be appropriate for a remedial planning project. Articles of the latter type represent the same requirements that are imposed on remedial Cooperative Agreement applications; however, the terms and conditions necessary to meet such requirements for an EPA-lead project are in some cases different from those imposed on Cooperative Agreements. (See Appendix F for Cooperative Agreement application provisions.)

Development of articles to SSCs and other EPA-lead agreements which are acceptable to both the State and EPA is the responsibility of the RSPO and the SPO. Each of the requirements identified here should be reviewed and, where appropriate, addressed in the agreement being negotiated.

## APPENDIX SUMMARY

This appendix contains examples of articles for inclusion in remedial implementation SSCs. It is organized in two sections:

- General agreement articles
- Superfund-specific articles.

Within each section, specific requirements have been highlighted and one or more examples of SSC articles have been provided. These examples are intended to be used only as a guide for drafting acceptable articles for individual SSCs and must be tailored to address site-specific conditions. Occasionally, the introduction to an article mentions Cooperative Agreements, when requirements for State-lead agreements differ from those for Federal-lead projects. This has been done to contrast the two types of agreements for the benefit of EPA and State staff.

While the examples provided in this appendix have been written to apply to SSCs, they can also be used to develop MOU articles, when this type of agreement is found to be appropriate. Specific requirements for individual MOUs will vary, depending upon the conditions of the site, the project under consideration, and the needs of EPA Regional and State officials. The RSPO and SPO should carefully review the contents of this Appendix and develop MOU articles accordingly. However, in two cases, below, the articles shown are for MOUs only. The introductory remarks clearly identify those articles.

## 1. GENERAL AGREEMENT ARTICLES

This section contains examples of general articles that both define the purpose and scope of the project to be undertaken and identify terms that are imposed because of the instrument used to document the agreement. Ten types of articles are included:

- Authority
- Purpose of the Agreement
- Parties to the Agreement
- Duration of the Agreement
- Amendments to the Agreement
- Procurement
- State Responsibilities
- Third Parties
- Termination of the Contract
- Failure to Comply with the Contract.

The samples provided should be reviewed and modified, as necessary, for individual site conditions and the type of agreement negotiated.

### A. Authority

Each SSC should contain a brief statement identifying Federal and State authority for entering into the agreement between EPA and the State. A sample article is provided below:

> This Contract is entered into pursuant to sections 104(a)(1), (c)(2), and (c)(3) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 et seq, and [cite relevant State law].

### B. Purpose of the Agreement

All SSCs should contain an article that briefly summarizes the project to be implemented at the site. An appropriate article is as follows:

> This Contract is an agreement between the U.S. Environmental Protection Agency ("EPA") and the State of [name of State] (the "State") to conduct [type of project, such as a remedial action] to be undertaken at (name of site) (the "site"). Attached hereto and incorporated herein as Appendix [__] is a description of the site and the response actions taken to date in connection with the site. This Contract covers only those activities described in the Statement of Work

(the "SOW") attached hereto and incorporated herein as Appendix [__]. This Contract may be amended if the parties agree to undertake additional remedial activities beyond the scope of the SOW.

C. Parties to the Agreement

An SSC should include the statement that the State agency entering into the agreement has the authority to do so. In addition, EPA may require a letter from the State Governor or Attorney General certifying that the Agency has this authority, if the Attorney General is not a signatory for the State. This letter may be generic, kept on file and used for all State- and EPA-lead agreements. (See Appendix J for sample certification letters.) SSCs should also designate the SFO and RSPO for the project in question. The following article may be used to achieve both of the above purposes:

> This Contract is between EPA and the [name of State agency entering into the Contract]. The agency entering into it on behalf of the State has legal authority to do so and to fulfill its terms. EPA has designated:
>
> [name of RSPO]
> [address]
> [telephone number]
>
> to serve as Project Officer for this Contract. The State has designated:
>
> [name of SPO]
> [address]
> [telephone number]
>
> to serve as the State Project Officer for this Contract.

D. Duration of the Agreement

Each SSC should contain a section specifying its period of performance. The period of performance should allow time for possible slippage in the estimated project schedule and for reconciliation of actual and estimated costs. A sample article for this purpose is provided below:

> The Contract shall become effective upon execution by both parties and shall remain in effect until January 1, 1987, or until completion of the activities described in the SOW and the assurances, whichever occurs later. The parties may

> agree to extend, by amendment, the duration of the Contract for the period necessary to implement any remedial activities that the parties agree to undertake beyond those defined in the SOW.

## E. Amendments to the Agreement

Each SSC should contain an article providing for implementing changes to the agreement, including the SOW. Sample language is shown here:

> Any change in this Contract must be agreed to, in writing, by both parties hereto, except as provided elsewhere in the Contract.

## F. Procurement

For EPA-lead projects, EPA is responsible for procuring goods and services necessary to carry out the proposed activities. This responsibility should be documented in an article to the SSC. An example follows:

> EPA shall arrange for the services of contractors to do the work described in the SOW and shall make all payments to the contractors for that work. EPA shall, at its own cost and expense, furnish the necessary personnel, materials, services, and facilities to perform responsibilities under this Contract. EPA will consult with the State on matters relating to the implementation of work in the SOW.

## G. State Responsibilities

All SSCs should include an article defining general State responsibilities under the Contract. Such an article is provided below:

> The State shall furnish the necessary personnel, materials, services, and facilities to perform its responsibilities under this Contract. None of the expenses incurred by the State in performing such responsibilities will be paid or reimbursed from the Hazardous Substance Response Trust Fund established by section 221 of CERCLA, except as provided in a separate agreement. State expenses will not count toward any cost-sharing requirements under this Contract or any future Contracts or Cooperative Agreements relating to the site. Specific responsibilities of the State are enumerated elsewhere in this Contract.

[However, some State costs may be paid under management assistance Cooperative Agreements. See Section IV.D of the text for more details.]

## H. Third Parties

Each SSC should include an article regarding benefit and harm to third parties. The following language is appropriate for this purpose:

> This Contract is intended to benefit only the State and EPA. It extends no benefit or right to any third party not a signatory to this Contract. In addition, EPA does not assume any liability to third parties with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 U.S.C. sections 1346(b), 2671-2680. To the extent permitted by State law, the State does not assume liability to any third parties with respect to losses due to bodily injury or property damage.

## I. Termination of the Contract

Each SSC should contain an article addressing termination of the Contract upon the mutual agreement of EPA and the State. Appropriate language for this type of article is given below:

> This Contract may be terminated before the remedial action described herein is completed if the parties jointly agree in writing.

## J. Failure to Comply with Terms of the Contract

Each SSC should contain a provision dealing with the eventuality of one party failing to comply with the terms of the contract as negotiated. Since the methods of recourse are different depending upon whether EPA or the State is the party who fails to comply, this article should contain two parts, as shown here:

1. If the State fails to comply with the terms of this Contract EPA may proceed under the provisions of section 104(d)(2) of CERCLA.
2. If EPA fails to comply with any requirements of this Contract, the State may, after providing 60 days notice, seek in the appropriate court of competent jurisdiction, to enforce the Contract.

## 2. SUPERFUND-SPECIFIC ARTICLES

This section contains examples of SSC articles that address requirements imposed by CERCLA and Office of Emergency and Remedial Response (OERR) policy. The subjects of these articles are the same as those imposed on remedial Cooperative Agreements between EPA and States, and in many cases reflect the same or similar requirements. However, some specific requirements of EPA-lead agreements are different from those of Cooperative Agreements (e.g., cost-sharing terms). The RSPO and the State should therefore review the articles below in developing each agreement.

Sample articles contained in this section address each of the following OERR requirements:

- CERCLA Section 104(c)(3) Assurances
  - Operation and Maintenance
  - Off-Site Treatment, Storage, or Disposal
  - State Cost-Sharing
- State Credits
- Fund Balancing
- National Contingency Plan
- Duties of the RSPO and SPO
- Site Access and Permits
- Community Relations Plan
- Site Safety Plan
- Access to Files
- Reporting Requirements
- Submission of Documents
- Responsible Party Activities
- Emergency Response Action
- Negation of Agency Relationship
- Enforcement and Cost Recovery.

All are appropriate for SSCs; those appropriate for other types of EPA-lead agreements, such as MOUs, will vary, depending upon the individual agreements negotiated. Where different approaches have commonly been used to address Superfund requirements, more than one sample article has been provided.

### A. CERCLA Section 104(c)(3) Assurances

Pursuant to CERCLA section 104(c)(3), the State is required to make the following assurances before EPA will provide a remedial action at a hazardous waste site:

- Operation and maintenance (O&M)
- Off-site treatment, storage, or disposal
- Cost-sharing.

CERCLA requires that these assurances be provided, when necessary, in either a Cooperative Agreement or a Contract.

The manner in which the State can provide its O&M and off-site disposal assurances is similar for SSCs and Cooperative Agreements. When an SSC is used, however, the cost-sharing assurance may require the negotiation of payment terms for the State's contribution for the project in question. Any payment terms must also be documented in an article to the SSC. Examples of acceptable articles for making required CERCLA 104(c)(3) assurances are provided below.

### Operation and Maintenance

The State is required, in accordance with CERCLA section 104(c)(3)(A), to assure all future O&M necessary for a remedial action project. Unless an initial remedial measure (IRM) is to be undertaken, the State is not required to provide this assurance prior to the conclusion of the feasibility study for the site. When necessary, the SSC should include an article concerning O&M to meet this requirement and should provide a plan for assumption of O&M responsibility. An appropriate SSC article follows:

> Pursuant to CERCLA section 104(c)(3)(A), the State shall provide all future operation and maintenance (O&M) of the remedial actions provided under this Contract, for the expected life of such actions.

[Requirements for the O&M plans can be found in Section III.B.2 of the text.]

### Off-Site Treatment, Storage, or Disposal

SSCs for remedial implementation, including IRMs involving off-site treatment, storage, or disposal, must provide the assurance mandated by CERCLA section 104(c)(3)(B). The assurance should be consistent with the policy memorandum entitled "Requirements for Selecting an Off-Site Option in a Superfund Response Action," issued by OSWER on January 28, 1983 (shown in Appendix P). If the facility selected requires a new RCRA compliance inspection, the RSPO should coordinate with Regional RCRA personnel and may offer REM/FIT assistance, if appropriate (see memorandum for further details). The following or equivalent language is appropriate for an SSC article:

> The State and EPA have determined that off-site treatment, storage, or disposal of hazardous substances is required for activities funded by this

Contract. EPA or its representative, in its invitation for bids for remedial action, will require respondents to provide adequate capacity for waste disposal at a facility (or facilities) that, at a minimum, meets the requirements of Subtitle C of the Solid Waste Disposal Act (RCRA). If a designated facility does not have a RCRA Part B permit, or if a RCRA compliance inspection has not been completed at the facility within the 12-month period prior to the execution of this Contract, a new inspection must be completed prior to award of a contract for treatment, storage, or disposal. Prior to award of the contract, the EPA Regional office will review the results of the compliance inspection and the facility's interim status. If deficiencies are found at the facility which may result in unsound treatment, storage, or disposal practices or pose a threat of future releases, the facility shall not be selected to receive hazardous substances for this project. If requested by EPA, the State shall provide a hazardous substance disposal facility that meets the requirements of RCRA Subtitle C and is acceptable to EPA.

## State Cost-Sharing

Unlike the procedure for a Cooperative Agreement application, where the State provides its cost-sharing assurance by identifying its share of costs in the project budget, an SSC will include an article documenting any cost-sharing payment terms; a separate article will authorize any reduction in State credit (see Section B of this appendix).

An acceptable article for documenting SSC payment terms contains the following parts:

- Identification of the total State obligation
- Schedule of State payments
- Provisions for submission of payments.

As described in Section V.B of the text, terms for scheduling State payments are flexible and should be negotiated between the RSPO and SPO. An example of an acceptable cost-sharing assurance article for remedial implementation at a privately-owned site is provided below:

1. The State will pay 10 percent of the costs of the remedial implementation subactivities defined in the SOW, as provided below. The current estimate of the cost is nine hundred seventy-five thousand dollars ($975,000).

The State's share is ninety-seven thousand five hundred dollars ($97,500). EPA will pay 90 percent of the costs of the work defined in the SOW.

2. Payment will be made in the following manner:

   - Within 30 days after signature of this Contract, the State shall submit to EPA its first payment for one-half of the State's share for the site activities: forty-eight thousand seven hundred fifty dollars ($48,750).

   - At intervals of 90 days thereafter, the State shall provide two payments of twenty thousand dollars ($20,000) each.

   - At the completion of the work defined in the SOW, EPA shall provide the State with copies of all documents pertaining to financial transactions of the contractor(s) retained by EPA to perform the work in the SOW. Final reconciliation of costs will be made at that time. Any additional payment by the State to EPA, up to a total of $97,500, or any refund by EPA to the State, will be made within 90 days after this reconciliation. This Contract may be amended to arrange for any additional payment in excess of $97,500.

3. All State payments shall be made payable to EPA and sent to:

Environmental Protection Agency
Accounting Operations
P.O. Box 2971
Washington, D.C. 20013

Attn: Collection Officer for
Superfund (PM-226)
Room 3419M

If the remedial implementation in the SSC is to occur at a site that was publicly-owned at the time of disposal, the cost-sharing provisions will be slightly more complicated. Although CERCLA section 104(c)(3)(C) stipulates that a State is responsible for at least 50 percent of all response costs at publicly-owned sites, the State is required to provide its cost share for removals and remedial planning retroactively if and when remedial implementation is taken at the site. Therefore, the SSC cost-sharing provision for remedial implementation at such sites will reflect provision of the State's contribution for any past removals or remedial planning. A sample provision which may be used in such cases follows:

1. The State will pay 50 percent of the costs of the remedial implementation subactivities defined in the SOW for this project, attached hereto and incorporated herein as Appendix [__]. The current estimate of the cost is one million, two hundred fifty thousand dollars ($1,250,000). The State's share of the remedial implementation costs is six hundred twenty-five thousand dollars ($625,000).

2. The State will also pay 50 percent of the costs of all removal actions and remedial planning which have been implemented at the site. A removal action costing fifty-five thousand dollars ($55,000) has been undertaken at this site. The total cost of remedial planning activities for this site has been four hundred ninety-five thousand dollars ($495,000). The State's cost share for the past removal and remedial planning at the site is two hundred seventy-five thousand dollars ($275,000).

3. The State's total share for 50 percent of all site response actions is nine hundred thousand dollars ($900,000). Payment will be made in the following manner: [terms shall be negotiated and recorded as in the article above; payments shall be sent to the EPA address shown above].

[The Contract will then include either a State payment schedule or provisions for reduction of CERCLA credit].

### B. State Credits

Under an SSC, the State may provide up to 100 percent of its cost share by authorizing drawdown of available site-specific credits granted pursuant to CERCLA section 104(c)(3). When the State uses credit, the SSC must contain an article documenting this. At sites for which the State has submitted a claim (see Appendix C of this document), but the EPA verification process is still in progress, the following sample article may be used for a privately-owned site:

> CERCLA sections 104(c)(3) and 104(d)(1) require that the State pay or assure payment of 10 percent of the costs of the remedial implementation activities to be undertaken pursuant to this Contract. CERCLA section 104(c)(3)(C) provides that EPA will grant the State a credit against the share of the costs for which it is responsible under this section for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof between January 1, 1978, and December 11, 1980 for cost eligible response actions. The State claims a credit of $20,000 [amount of claim] for expenditure of funds for response actions at the site between January 1, 1978, and December 11, 1980. EPA accepts this estimate at face value pending final verification of the eligibility and allowability of claimed costs. At EPA's request, the State shall make supporting documentation available for audit. Based on final verification of these costs, the amount the State will have to provide as its cost share for the remedial implementation activities in this Contract will be adjusted to satisfy the State's cost-sharing responsibilities. The State will not be reimbursed for any credit remaining at the conclusion of Federally-funded response actions at this site, nor may the State apply the remaining credit to the cost of remedial activities at another site.

When the State has a verified credit, the following sample article may be appropriate for a privately-owned site:

> CERCLA sections 104(c)(3) and 104(d)(1) require that the State pay or assure payment of 10 percent of the costs of the remedial implementation activities to be undertaken pursuant to this Contract. CERCLA section 104(c)(3) provides that EPA will grant the State a credit against the share of the costs for which it is responsible under this section for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof between January 1, 1978 and December 11, 1980 for cost eligible response actions. The State has a verified credit of $20,000 [amount of credit] for expenditure of funds for response actions at the site between January 1, 1978 and December 11, 1980. This credit will be applied toward the State's cost-sharing obligation for

> remedial implementation activities conducted under this Contract. The State will not be reimbursed for any credit remaining at the conclusion of Federally-funded response actions at this site, nor may the State apply the remaining credit to the cost of remedial activities at another site.

In addition, an SSC may need to include an article concerning the use of any credit accrued for past cost-sharing in remedial planning activities at that site. Under previous EPA policy, some States were required to share in the costs of remedial planning activities at privately-owned sites. EPA's recent legal interpretation, consistent with CERCLA, however, has eliminated this requirement. The memorandum entitled "Guidance on Implementing Waiver of 10 Percent Cost Share for Remedial Planning," issued by the Director, OERR on June 1, 1983 (see Appendix P), has provided that each SSC for such projects at privately-owned sites may be amended to either (1) revise the payment terms for the project to 100 percent EPA funding or (2) apply any State costs incurred for such activities against future cost-sharing obligations for remedial implementation at the site. If the latter option is utilized, the SSC funding remedial implementation at the site should contain an article documenting the application of such costs; the following article maybe used for this purpose:

> The State has shared in the costs of past remedial planning activities at the site described herein under the Contract dated [___]. States are no longer required to share in the costs of remedial planning and costs incurred by the State for such activities will be applied toward its cost-sharing obligation for remedial implementation at the same site. The State has provided $50,000 [amount paid previously] for remedial planning cost-sharing under the Contract cited above. This sum will be counted against the State's obligation for the remedial implementation activities defined in the SOW for this Contract, attached hereto and incorporated herein as Appendix [__]. The remainder of the State's cost-sharing obligation for the remedial implementation activities defined in this Contract will be provided in accordance with the terms described elsewhere in this Contract.

### C. Fund-Balancing

All SSCs should contain an article addressing the Fund-balancing provisions of CERCLA. In accordance with CERCLA section 104(c)(4), further funding subsequent to the completion of a project will be weighed against requirements to respond at other sites. The following article may be used for inclusion in all Contracts:

> CERCLA section 104(c)(4) requires that CERCLA-funded actions provide a cost-effective response, balancing the need for protection of public health, welfare and the environment against the availability of amounts from the Fund to respond at other sites. If the State requests additional Fund-financed response at the site, EPA will evaluate the request against available Fund monies to determine whether it is appropriate. This Contract does not commit EPA to future funding for response actions at the site.

## D. The National Contingency Plan (NCP)

Like a Cooperative Agreement, an SSC will not be executed unless proposed activities are scoped according to the NCP. SSCs should, therefore, contain a provision relating to this; the article presented below may be used for this purpose:

> All activities conducted under this Contract shall be consistent with the revised National Contingency Plan (NCP), 40 CFR 300, dated July 16, 1982 (47 Federal Register 31180).

[FOR MOUs ONLY] If the project to be undertaken involves a remedial investigation/feasibility study, the article should also include the following sentence:

> Remedial alternatives developed as part of the remedial investigation/feasibility study will be identified, evaluated, and ultimately categorized as initial remedial, source control, or off-site measures based upon the factors established in section 300.68(e) of the NCP.

## E. Duties of the RSPO and SPO

An article in each SSC should specify certain duties that the RSPO and the SPO will have during conduct of the project. This article will vary, depending on the agreement negotiated and the conditions and requirements of the site. However, it should include a statement of the RSPO's and SPO's prerogatives to effect minor project changes. An example is provided below:

> The EPA Project Officer and the State Project Officer have joint authority to make project decisions that do not enlarge the scope of the re-

sponse actions at the site or the cost of the project. In addition, the EPA Project Officer will report modifications to schedules or activities to the State Project Officer.

## F. Site Access and Permits

Each SSC should contain a section concerning access to the site. Two types of access should be addressed:

- Site access and permits necessary to conduct remedial activities

- Access of State personnel during remedial activities.

Examples of articles concerning both are provided below.

### Access to the Site and Permits

In accordance with OERR's practice of requiring States either to obtain necessary access and permits, to the extent of their statutory authorities, or to assist EPA in obtaining them, each SSC should contain the following article or its equivalent:

> The State agrees, to the extent of its legal authority, to secure access to the site and adjacent properties, as well as all rights-of-way and easements necessary to complete the response actions undertaken pursuant to this Contract. As requested by EPA, the State shall also obtain or assist EPA in obtaining any permits that are necessary to satisfactorily complete the activities described in the SOW.

### State Access During Remedial Response

SSCs should contain an article addressing State access to the site during the course of remedial activities. A sample article is as follows:

> Representatives of the State shall have access to the site to review work in progress and shall comply with the site safety plan. EPA shall not be responsible for any harm to any State representative or other person arising out of, or resulting from, any act or omission by the State in the course of an on-site visit.

## G. Community Relations Plan (CRP)

An SSC will not be executed unless a revised CRP has been prepared for the proposed project. The original CRP for the site must have been developed and included with the MOU or State letter of request under which remedial planning was conducted. When the SSC is negotiated to cover remedial implementation, that plan will be revised by EPA for inclusion in the Contract. It will be implemented by EPA with assistance from the State, as specified in the CRP. The CRP may be referred to in the SSC as follows:

> The State and EPA agree that community relations activities at the site will be conducted in accordance with the approved Community Relations Plan.

FOR MOUs ONLY: If the agreement covers remedial planning activities, a statement should be added to provide for a period of public comment on any actions recommended:

> Public input will be sought at the end of the feasibility study and prior to final selection of remedy, in accordance with the approved Community Relations Plan.

[A sample CRP is contained in Appendix K.]

## H. Site Safety Plan

Each SSC should include an article stating that EPA will be responsible for the preparation and implementation of a safety plan for the site. Normally, the plan will be prepared by an EPA contractor, but must be consistent with the following:

- CERCLA sections 104(f) and 111(c)(6)
- EPA Order 1440.2 - Health and Safety Requirements for Employees Engaged in Field Activities
- EPA Order 1440.1 - Respiratory Protection
- EPA Occupational Health and Safety Manual
- EPA Interim Standard Operating Safety Guide
- Applicable OSHA standards
- Appropriate State health and safety regulations and site conditions.

The following article may be used for this purpose:

> EPA will be responsible for the development and implementation of the site safety plan for the project contemplated by this Contract.

[A sample site safety plan is contained in Appendix L.]

## I. Access to Files

An article addressing access to files and information exchange between the State and EPA should also be included in all SSCs. This article should specify that both EPA and the State will be granted access to each other's files and should note any claim of confidentiality is made. Representatives of the State should communicate confidentiality requirements to EPA Regional personnel so that language can be developed to adequately address these needs. Sample language is provided below:

> At EPA's request and to the extent allowed by State law, the State shall make available to EPA any information in its possession concerning the site. At the State's request and to the extent allowed by Federal law, EPA shall make available to the State any information in its possession concerning the site. If any information is provided to EPA by the State under a claim of confidentiality, it will be treated in accordance with 40 CFR 2, if the State has given EPA notice of a claim of confidentiality. EPA will not disclose information submitted under a claim of confidentiality unless EPA is required to do so by Federal law and has given the State advance notice of EPA's intent to release that information. Absent notice of such claim, EPA may make said information available to the public without further notice.

## J. Reporting Requirements

Unlike a Cooperative Agreement, under which the State is required to make quarterly reports to EPA to inform EPA officials of the progress of on-site activities, work under an EPA-lead agreement is performed by EPA or its representatives. It is therefore EPA's responsibility to keep the State informed of the progress of remedial response activities. To document this, the SSC should contain an article addressing EPA's reporting responsibility. The example provided below may be used for this purpose:

> EPA agrees to submit progress reports to the State Project Officer at quarterly intervals, commencing at the start of the project. These

> reports shall include estimates (percentages) of work completed for each activity in the SOW and estimates of variances (cost and time) expected at project completion.

### K. Submission of Documents

Under a Cooperative Agreement, it is the State's responsibility to submit, for EPA review, all documents prepared under the Agreement. Under an EPA-lead agreement, however, EPA should afford representatives of the State an opportunity to review project documents. This fact should be recorded in an article in the SSC. An example of an article addressing this follows:

> EPA will submit all final plans, reports, and/or recommendations to the State Project Officer for review prior to issuance or implementation.

### L. Responsible Party Activities

If there is the potential for responsible parties to undertake voluntary remedial response activities at the site in question, this fact should be recorded in the SSC. Language for an article concerning this is as follows:

> If EPA reaches an agreement with any of the responsible parties to undertake all or part of the remedial activities described in the SOW for this Contract, the Contract shall be amended to revise the SOW accordingly.

### M. Emergency Response Action

It is possible that an emergency action may have to be initiated at the site sometime during the remedial activities defined in the SSC. For this reason, the SSC may contain an article addressing the effect of any necessary emergency response actions on the progress of the remedial activities defined in the SOW. Sample language for such an article is provided below:

> Any emergency response activities conducted pursuant to the National Contingency Plan, 40 CFR section 300.65, shall not be restricted by the terms of this Contract. EPA, in consultation with the State, may suspend or modify the remedial activities defined in the SOW for this Contract during and/or subsequent to the emergency

response actions. If such is the case, the State's share of responsibility for conducting response activities may also be revised and the State's financial obligation may be adjusted downward.

## N. Negation of Agency Relationship

It is important to both EPA and the State that each SSC contain an article negating the principle that a rela- tionship of agency exists between EPA and the State in the conduct of the remedial implementation activities. This assertion could increase the potential of exposure to tort liability and complicate cost recovery efforts. The following provision or its equivalent should be included in the SSC to negate this principle:

> Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. Any standards, procedures or protocols prescribed in this Contract to be followed by EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product of the actions contemplated by the Contract, and do not constitute a right to control the actions of EPA. EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Contract, and the State (including its employees, agents, and contractors) is not authorized to represent or act on behalf of EPA in any matter relating to the subject matter of this Contract.

## O. Enforcement and Cost Recovery

Under CERCLA, both EPA and affected States can institute enforcement actions against and/or negotiations with parties responsible for priority waste sites. When this occurs, a settlement or legal action by either party could potentially impede or even negate the other's claim for recovery of funds expended at the site. To avoid this, obligations, rights, and procedures for litigation must be defined. Therefore, articles addressing cost recovery and other enforcement considerations should be included in all SSCs. Specific articles for different enforcement subjects are presented below and should be included in the Contract, as appropriate.

## Notice of Intent to Settle or Initiate Proceedings

EPA and the State agree that, with respect to the claims which each may be entitled to assert against any third persons (herein referred to as the "responsible party," whether one or more) for reimbursement of any services, materials, monies or other thing of value expended by EPA or the State for response activity at the site described in this Contract, neither EPA nor the State will enter into a settlement with or initiate a judicial or administrative proceeding against a responsible party for the recovery of such sums except after having given notice in writing to the other party to this Contract not less than thirty (30) days in advance of the date of the proposed settlement or commencement of the proposed judicial or administrative proceedings. Neither party to this Contract shall attempt to negotiate for nor collect reimbursement of any response costs on behalf of the other party, and authority to do so is hereby expressly negated and denied.

## Cooperation and Coordination in Cost Recovery Efforts

EPA and the State agree that they will cooperate in and coordinate efforts to recover their respective costs of response actions taken at the site described herein, including the negotiation of settlement and the filing and management of any judicial actions against potentially responsible parties. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under the provisions of any applicable State or Federal law or regulation.

## Judicial Action

EPA and the State agree that any judicial action taken by either party pursuant to CERCLA against a potentially responsible party for recovery of any sums expended in response actions at the site described herein shall be filed in the United States District Court for the judicial district in which the site described in this Contract is located, or in such other judicial district of the United States District Courts as may be authorized by section 113 of CERCLA, and agreed to in writing by the parties to this Contract.

## Litigation Under CERCLA Section 106 and 107

Signature of this Contract does not constitute a waiver of EPA's right to bring an action against any person or persons for liability under section 106 or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or any other statutory provision or common law.

## Sharing Recovered Funds with EPA

[NOTE: This article should be used in SSCs only when EPA has recovered all possible Federal costs of site response from responsible parties or when the State has filed a recovery action which EPA has determined should be pursued rather than dismissed.]

Any recovery achieved by the State pursuant to settlement, judgment or consent decree or any action against any of the responsible parties will be shared with EPA in proportion to EPA's contribution to the site remedial response activities under CERCLA.

# APPENDIX I

## SAMPLE SUPERFUND STATE CONTRACT

### PURPOSE

This appendix has been included to demonstrate the components of a Superfund State Contract (SSC) submission package and to assist the Regional Site Project Officer (RSPO) in compiling the necessary information for the submission.

### BACKGROUND

An SSC submission package is comprised of a number of documents that both delineate State and EPA responsibilities for a remedial implementation project and provide additional information about the site and the project. Usually developed jointly by the RSPO and the State Project Officer (SPO), the SSC is the key component of the SSC submission package. Additional components of the package include:

- A statement of work (SOW) for the remedial activities
- A certification letter from a responsible State official, guaranteeing that the State agency entering into the Contract has authority to do so and to make any CERCLA 104(c)(3) assurances required for conduct of the project (see Appendix J)
- A Community Relations Plan (see Appendix K).

The SSC submission package may also include any documents which further define the problems encountered at the remedial site.

### APPENDIX SUMMARY

This appendix provides a sample SSC submission package for remedial implementation, involving a remedial action and operation and maintenance (O&M),* to be undertaken at the Lehigh Electric Engineering site in Pennsylvania. The example provided originally contained each of the elements listed above. Because of space considerations, however, attachments to the SSC were not reproduced here.

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* According to current EPA policy, the State and EPA must now enter into a Cooperative Agreement to provide EPA's share of O&M costs.

In utilizing this SSC, the reader should pay special attention to the sections dealing with two of the CERCLA section 104(c)(3) assurances: Operation and Maintenance (O&M) and Off-Site Storage, Destruction, Treatment, or Disposition. In SSCs covering remedial action, the State must assure that it will assume responsibility for providing O&M for the life of the project. The SSC shown contains a provision that the State will confirm the acceptability of the off-site facility selected by EPA's remedial implementation contractor. Such an article should no longer be used in SSCs. Rather, in accordance with recent Office of Emergency and Remedial Response (OERR) policy, the State should assure that it will provide an acceptable off-site facility if requested to do so by EPA (see Appendix H for appropriate language).

The reader should also note that the article presented here dealing with site access (Section K of this appendix) should no longer be used in developing SSCs. Instead, refer to Part 2 of Appendix H for an acceptable example.

This SSC submission package is intended merely to serve as an example to be considered during preparation of individual SSCs for remedial action. It should be kept in mind, however, that each SSC package must reflect individual site requirements. For this reason, contents and articles required in specific cases may vary.

# SUPERFUND STATE CONTRACT
# FOR REMEDIAL IMPLEMENTATION AT
# BRUIN LAGOON
# BETWEEN THE
# COMMONWEALTH OF PENNSYLVANIA
# AND THE
# U.S. ENVIRONMENTAL PROTECTION AGENCY

## A. Authority

This contract is entered into pursuant to sections 104(a)(1), (b), (c)(2) and (c)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601 et seq.

## B. Purpose

1. This Contract is an agreement between the U.S. Environmental Protection Agency (EPA) and the Commonwealth of Pennsylvania Department of Environmental Resources (DER) to implement the waste containment remedy selected by DER and EPA at Bruin Lagoon (the "site"). The waste containment remedy consists of removal of liquids and supernatant, stabilization of sludges and application of a multilayer cap system, ground water interception, and stabilization of the dike. Attached as Appendix A and incorporated herein by reference is the Community Relations Plan which includes a description of the site and response actions taken to date.

2. This Contract covers remedial implementation which entails both the remedial action phase, as described in the Statement of Work (SOW), incorporated herein as Appendix B, and the operation and maintenance requirements after the remedial action phase.

## C. Parties

1. This Contract is between the EPA and DER. Upon signature to this Contract, the State's Attorney General certifies that the DER has the legal authority to enter into this Contract on behalf of the State and to fulfill the terms of this Contract.

2. EPA has designated Ms. Kathryn Hodgkiss, Environmental Scientist, U.S. Environmental Protection Agency, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-9023, to serve as Regional Site Project Officer for this Contract.

3. DER has designated Mr. Russell Crawford, Department of Environmental Resources, Meadville Regional Office, 1012 Water Street, Meadville, PA 16335, (814) 724-8526 as Project Coordinator for this Contract.

4. The Regional Site Project Officer, the Project Coordinator and the Director of the DER Bureau of Solid Waste Management or his designee have authority to jointly make project decisions that do not enlarge the scope of the response actions at the site or increase the cost.

## D. EPA Responsibilities

1. EPA shall procure the services of contractors to perform the tasks in the SOW. Further, EPA shall, at its own cost and expense, furnish the necessary personnel, materials, services, and facilities to perform responsibilities under this Contract.

2. EPA will consult with DER on matters relating to the implementation of work in the SOW, including the review and approval of bid packages and any amendments thereto.

3. EPA shall provide DER an opportunity to review the complete bid package 10 business days before it is published for bids. Bid packages shall require joint approval of EPA and DER prior to publication for bidding. If DER does not respond to EPA within the 10 day period, then publication will proceed. The requirement for DER approval shall also apply to any and all amendments to the bid package.

## E. State Responsibilities

DER shall at its own cost and expense furnish the necessary personnel, materials, services, and facilities to perform its responsibilities under this Contract. None of the expenses incurred by DER in performing such responsibilities will be paid or reimbursed from the Hazardous Substance Response Trust Fund established by section 221 of

CERCLA, nor counted toward any cost-sharing requirements under this Contract or any future Contracts or Cooperative Agreements relating to the site. Specific responsibilities are further described in the following paragraphs: G, H, I, K, L, M, N, P & R.

## F. Emergency Response Action

Any emergency response activities conducted pursuant to the National Contingency Plan, 40 CFR §300.65, shall not be restricted by the terms of this Contract. EPA, in consultation with DER, may suspend or modify the response activities in the SOW for this Contract during and subsequent to the emergency response actions.

## G. Payments

1. DER will pay 10 percent of the costs of the remedial action phase as described in the SOW at the Bruin Lagoon site as provided in this paragraph G.1. The current estimate of the cost of the construction contract to be signed between EPA and the successful bidder for the remedial action phase activities is two million, eight hundred twenty-seven thousand, seven hundred forty dollars ($2,827,740) and the cost of the U.S. Army Corps of Engineers (USACE) management of the remedial project is two hundred forty-five thousand dollars ($245,000). The total cost of the remedial action phase is three million, seventy-two thousand, seven hundred forty dollars ($3,072,740). DER's share of the total cost shall not exceed three hundred seven thousand, two hundred seventy-four dollars ($307,274). DER declares that $307,274 is available for the purposes of this agreement. Payments for operation and maintenance are not included in the 10 percent share of the remedial action phase activities as described in the SOW.

2. If the lowest responsive, responsible bidder for the construction contract exceeds the estimate of two million, eight hundred twenty-seven thousand, seven hundred forty dollars ($2,827,740), DER or EPA may reject the bid.

3. DER's payment will be made in the following manner: Within 30 days after this Superfund State Contract is executed, the DER shall authorize payment to EPA for half of the State share for the construction contract ($141,387) and half of

the State share for USACE management expenses ($12,250) thereby totaling one hundred fifty-three thousand, six hundred thirty-seven dollars ($153,637).

4. No later than 30 days after receipt of a copy of the signed contract between USACE and the successful bidder for the remedial action phase activities, DER shall authorize its second payment to bring the cost share balance to 10 percent of the amount of the construction contract and the cost of the USACE management expenses, not to exceed one hundred fifty-three thousand, six hundred thirty-seven dollars ($153,637).

5. When the remedial action is complete, a final cost and audit information required in paragraph S will be provided to DER.

6. EPA's Fiscal Control Center in the Office of Emergency and Remedial Response will inform EPA's Financial Management Division in the Office of Fiscal and Contracts Management and DER if any overpayment has been made by DER. Any overpayment by DER will be refunded within 90 days after determination of said overpayment.

7. If additional funds are required to meet DER's financial obligations as set forth in this payment section, then DER will request adequate funds to meet the 10 percent share. This Contract may be amended to arrange for any additional payment.

8. All DER payments to EPA shall be made payable to EPA and sent to:

   EPA
   Accounting Operations
   P.O. Box 2971
   Washington, D.C. 20013

   Attn: Collection Officer for Superfund
   (PM-226)
   Room 3419M

9. EPA will pay 90 percent of the costs for the remedial action phase described in the SOW.

## H. Off-Site Storage, Destruction, Treatment or Disposition

DER will be responsible for confirming that the disposal sites selected by the apparent low responsive, responsible bidder meet the requirements of the invitation to bid and are authorized to accept and have adequate capacity to accept any wastes.* Those facilities accepting hazardous substances as defined in CERCLA must comply with the requirements of Subtitle C of the Solid Waste Disposal Act but need not be located within the State's borders.**

## I. Operation and Maintenance (O&M)

The DER shall, within its lawful authority, perform or assure performance of all future operation and maintenance (O&M), as provided in this paragraph, for 30 years. The O&M activities of the waste containment remedy shall consist of those activities stated in the final design report prepared by Roy F. Weston and mutually approved by EPA and DER. EPA will establish cleanup contract performance specifications which will ensure successful completion of the remedial action. Upon completion of the remedial action, EPA will provide technical assistance to DER on O&M for a period of up to six months.*** With respect to stability and revegetation, DER's O&M obligation and the six-month period shall begin after EPA and DER mutually determine that the site has been stabilized and a permanent vegetation growth has been established. In no event will O&M activities include restoration from damages from acts of war, acts of God or acts solely attributable to third parties. DER will request adequate funds to perform its obligation under this Contract in every applicable request to the legislature. DER will promptly inform EPA if the legislature fails to appropriate adequate funds to meet DER's O&M responsibilities.

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* Current EPA policy is that the State must assure that it will provide an acceptable off-site facility, should EPA request that it do so.

** Additional requirements that the facility must meet are given on Section I.B.3 of the text and in the policy memorandum in Appendix P.

*** Current EPA policy is to share in the costs of O&M for up to one year. EPA and the State must enter into a Cooperative Agreement to provide EPA's share of O&M costs.

## J. Personnel Safety

EPA agrees to develop and oversee the implementation of the site safety plan.

## K. Access to the Site

EPA and DER shall attempt to secure access to the site for the remedial action phase and the long-term O&M through an agreement with the site owner. If such an agreement is not entered into and access is not subsequently obtained within 180 days of the execution of this Contract, the Contract is terminated and both parties are released from all responsibility hereunder.

## L. DER Inspection During Remedial Activities

1. Representatives of DER shall have access to the site to review work in progress.

2. EPA shall not be responsible for any harm to any DER representative or other person arising out of or resulting from any act or omission by the State in the course of an on-site inspection.

## M. Information on the Site

1. At EPA's request, DER shall make available any information in its possession concerning the site, pursuant to State law. If said information was submitted by DER under a claim of confidentiality, said information will be treated in accordance with 40 CFR Part 2. Absent such a claim, EPA may make said information available to the public without further notice.

2. EPA agrees to make available any information and reports developed as part of its responsibilities under this Contract. Consistent with State law, DER agrees not to release any information to the public which EPA has marked confidential and/or which may potentially affect present or planned enforcement actions unless approved by both EPA's Region III Office of Regional Counsel and the DER Project Coordinator.

## N. Community Relations Plan

EPA and DER will jointly develop and implement the Community Relations Plan. The detailed site-specific plan is attached as Appendix A.

## O. Third Parties

1. This Contract is intended to benefit only DER and EPA. It extends no benefit or right to any third party not a signatory to this Contract.

2. EPA does not assume any liability to third persons with respect to losses due to bodily injury or property damages that exceed the limitations contained in the provisions of 28 USC Sections 1346(b), 2671-2680. To the extent permitted by State law, the State does not assume liability to any third person with respect to losses due to bodily injury or property damages.

## P. Federal Enforcement Action*

EPA and the DER agree that they will cooperate and coordinate in any efforts to recover their respective costs of response actions taken at the site described herein, including the negotiation of settlement and the filing and management of any judicial actions against potentially responsible parties. This shall include coordination in the use of evidence and witnesses available to each in the preparation and presentation of any cost recovery action, excepting any documents or information which may be confidential under the provisions of any applicable State or Federal law or regulation.

## Q. Responsible Party Activities

If EPA reaches an agreement with any of the responsible parties to undertake all or part of the remedial action, the SOW or DER's share of the response activities as defined in the SOW, will be revised accordingly and DER's financial obligation as set forth in Section G may be adjusted downward.

## R. Permits

As appropriate, DER will obtain or assist EPA in obtaining any permits that are necessary to satisfactorily complete the response actions.

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* Current EPA policy is to include the first four articles shown in Appendix H, Section 2, Subsection O, Enforcement and Cost Recovery, in all SSCs.

## S. EPA Audit Records

EPA will provide DER with financial and compliance records concerning the contractor(s) retained by EPA or the USACE to perform the work described in the SOW. EPA will also provide DER with records concerning the USACE. Such USACE records will be kept on a daily basis and include dates, names of USACE personnel, titles, hourly rates, hours worked, a description of their functions and the signature of the USACE project supervisor on the site for that day.

## T. Amendments

Any change in this Contract must be agreed to, in writing, by both parties hereto, except as provided in paragraphs C.4 and Q.

## U. Termination of the Contract

This Contract shall remain in effect for 30 years unless the parties enter into a termination agreement which will establish the effective date of termination of this Contract, the basis for settlement of termination costs, which shall include all project costs incurred as well as any close-out costs, and the amount and date of any sums due either party.

In witness whereof, the parties hereto have executed this contract in seven (7) copies, each of which shall be deemed an original.

This contract is effective:

_______________ date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Lee M. Thomas
Assistant Administrator
Office of Solid Waste and Emergency Response

3/20/83
date

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

Nicholas DeBenedictis
Secretary of Environmental Resources

4/5/83
date

Attest:

4/5/83
date

Approved as to Legality and Form: Comm. - Fed

Dep Attorney General

_______________ date

Chief/Assistant Counsel
Department of Environmental Resources

3/29/83
date

Approved:

Secretary of Budget and Administration

_______________ date

ME 82342

I hereby certify that funds in the amount of $307,274.00 are available under Appropriation. 61 - 35 - 03 - 82 - 1 - 430 - 43003

Carl Phillips
Comptroller

4/1/83
date

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# APPENDIX J

# SAMPLE CERTIFICATION LETTERS

## PURPOSE

This appendix has been provided to assist State officials in certifying the authority of the State pollution control agency to enter into a remedial response agreement.

## BACKGROUND

Section 104(c)(3) of CERCLA requires that the Federal government not fund a remedial action unless the State first enters into a Cooperative Agreement or contract that provides adequate assurances relating to cost-sharing, off-site treatment, storage, or disposal, and operation and maintenance. In addition to providing these assurances, a State must certify that the agency entering into the agreement on behalf of the State has the authority both to do so and to provide any CERCLA assurances which are necessary for completion of the project.

This certification should be in letter format and should be signed by the State's Governor or Attorney General. Such a letter may cover more than one site and may be submitted to EPA with all appropriate agreements. Detailed information required, such as on the State assumption of operation and maintenance responsibility, may be provided elsewhere in the agreement submission.

## APPENDIX SUMMARY

This appendix contains sample letters which provide the required certifications. Letters reproduced here are:

- A generic letter from the State of Texas, assuring that the agency entering into the agreement has authority to do so on behalf of the State; this can be used for any hazardous waste site in Texas
- A site-specific letter from the State of Arizona, assuring that the State agency has authority to enter into a Cooperative Agreement for remedial response at the Tucson International Airport site.

As can be observed from the samples reproduced here, certification letters may vary considerably in length and scope. Those provided are intended to serve as examples, which States may use in developing such letters for their own use.

OFFICE OF THE GOVERNOR
STATE CAPITOL
AUSTIN, TEXAS 78711

**WILLIAM P. CLEMENTS, JR.**
**GOVERNOR**

February 8, 1982

Mr. Dick Whittington, Regional Administrator
U.S. Environmental Protection Agency
Region VI
1201 Elm Street
Dallas, Texas 75270

Dear Mr. Whittington:

In response to your letter concerning the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), I want to take this opportunity to formally designate the Texas Department of Water Resources as the lead agency authorized to enter into cooperative agreements and contracts under Section 104 of CERCLA. Historically, the Texas Department of Water Resources has been the state agency responsible for monitoring and regulating hazardous waste sites. I have every confidence that this agency and the Environmental Protection Agency can continue to maintain the cooperative working relationship that has been established. Additionally, the Department can facilitate any appropriate communications with other state agencies relative to the Act.

Again, I appreciate the opportunity to formally designate the Texas Department of Water Resources as Texas' lead agency in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

If I can be of any further assistance, please let me know.

Sincerely,

Bill Clements

William P. Clements, Jr.
Governor of Texas

ms

cc Mr. Harvey [illegible]. Davis, Executive Director ✓
Texas Department of Water Resources

RECEIVED
FEB 09 '82
ENFORCEMENT AND
FIELD OPERATIONS

Attorney General
1275 WEST WASHINGTON
Phoenix, Arizona 85007

Robert K. Corbin

April 6, 1983

Mr. Lee Thomas
Acting Assistant Administrator
Office of Solid Waste and Emergency Response
United States Environmental Protection Agency
401 "M" Street, S. W.
Washington, D. C. 20460

Re: Cooperative Agreement
Phase I Investigation
Tucson International Airport Area

Dear Mr. Thomas:

My client, the Arizona Department of Health Services ("ADHS"), has asked the Attorney General to review ADHS' legal authority to execute a cooperative agreement with the United States Environmental Protection Agency ("EPA") for a Phase I remedial investigative study, which will define the extent and magnitude of a contaminant plume and identify sources of groundwater contamination within the proximity of the Tucson International Airport.

The remedial investigative study will consist of three primary activities--one, the installation of groundwater monitoring wells; two, the continued monitoring of existing wells and monitoring of new wells; three, solute transport modeling of the migration of the contaminant plume.

For purposes of this review, it is understood that the President's authority under Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") has been delegated to EPA and it is acknowledged that there has been a release of a hazardous substance into the environment. My review of relevant federal and state statutes is as follows.

Section 104(c)(3) of CERCLA provides, in part, that

> The President shall not provide any remedial actions pursuant to this section unless the State in which the release occurs first enters into a contract or cooperative agreement with the President . . . .

Because ADHS will take the lead on the investigative study and because Superfund monies will be transferred to ADHS by EPA, the particular remedial action will be implemented through a cooperative agreement rather than through a contract.

In a document captioned "GUIDANCE - COOPERATIVE AGREEMENTS AND CONTRACTS WITH STATES UNDER THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980," dated March, 1982, EPA has taken the position that "remedial actions" under Section 104 include remedial planning activities. The investigative study can be categorized as remedial planning and therefore a "remedial action" which invokes the application of Section 104(c)(3). I now address the applicable provisions of Section 104(c)(3).

Section 104(c)(3)(A) provides that a cooperative agreement must contain an assurance that "the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President." Because the remedial action (the investigative study) in this instance requires no future maintenance, this provision of CERCLA has no application to the cooperative agreement to be executed by EPA and ADHS. If remedial action maintenance activities become necessary within the scope of the investigative study, the cooperative agreement can be amended to provide for such assurances.

Section 104(c)(3)(B) provides that a cooperative agreement must contain an assurance that "the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary off-site storage, destruction, treatment or secure disposition of hazardous substances." Again, since the remedial action is strictly limited to an investigative study, this provision of CERCLA has no application to the cooperative agreement to be executed by EPA and ADHS. However, if such an assurance should become applicable during the course of the investigative study, the cooperative agreement can be amended accordingly.

Section 104(c)(3)(C) requires that a cooperative agreement contain an assurance that "the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action . . . ."

Section 104(c)(3)(C) further provides:

> The President shall grant the State a credit against the share of the costs for which it is responsible under this paragraph for any documented direct out-of-pocket non-Federal funds expended or obligated by the State or political subdivision thereof after January 1, 1978.

The total cost of the investigative study is estimated to be $581,280. Of that amount, the State of Arizona (through ADHS) must assure payment of 10% or $58,128. ADHS, in 1982, was given specific authority by the Arizona Legislature to meet CERCLA matching funds requirement.

Arizona Revised Statutes ("A.R.S.") § 36-1852 (Designation of state agency) provides:

> The department of health services . . . is designated as the water pollution control agency for this state for all purposes of . . . the Comprehensive Environmental Responses [sic], Compensation, and Liability Act of 1980 . . . and is authorized to take all action necessary or appropriate to secure to this state the benefits of such acts . . . .

Because the "investigative study" is directly related to pollution or contamination of ground water, ADHS is authorized to take action to secure the benefits of CERCLA. Because the receipt of federal Superfund money is a benefit to the State of Arizona, ADHS has authority to take necessary or appropriate action to secure the receipt of CERCLA money. One such necessary action is the assurance of a 10% match of CERCLA monies expended by EPA. Sections of the Arizona Revised Statutes make it clear that ADHS has the authority to make the required match money assurances.

Because the Tucson International Airport area is on EPA's national priority list, WQARF monies are authorized to be used for necessary match money obligations. A.R.S. § 36-1854.01.A provides for a water quality assurance revolving fund (WQARF) which is a fund administered by ADHS and is not subject to appropriations lapsing.

A.R.S. § 36-1854.01 (Water quality assurance revolving fund; uses; application), subsection B provides:

> Monies from the water quality assurance revolving fund shall be used for the purpose of providing state match monies for any ground water site selected pursuant to the Comprehensive Environmental Responses [sic], Compensation, and Liability Act of 1980 . . . .

A.R.S. § 36-1856.4 authorizes ADHS to

> Enter into agreements with the administrator for receipt of federal Comprehensive Environmental Responses [sic], Compensation, and Liability Act of 1980 . . . monies to be used for the removal or cleanup of pollution of ground water."

Since the investigative study is specifically related to removal or cleanup of ground water pollution, ADHS has authority to execute the cooperative agreement with the EPA Administrator or the Administrator's delegatee.

Furthermore, A.R.S. § 36-104.7 authorizes ADHS to "make contracts and incur obligations within the general scope of its activities and operation subject to the availability of funds." (Emphasis added.) A.R.S. § 36-1856.6 provides that ADHS has authority to

> Encourage, participate in, or conduct studies, investigation, research and demonstration relating to water pollution and causes, minimization, prevention, control and abatement thereof . . . .

The substance of the cooperative agreement falls within the purview of § 1856.6, which is "within the general scope" of ADHS' activities and operation and is therefore within ADHS' contracting authority.

The only limitation to ADHS' contracting authority, under § 104.7, is "the availability of funds." This appropriations limitation is alleviated by the application of the aforequoted provisions of § 1854.01.

Based upon my review of the applicable provisions of Section 104(c)(3) of CERCLA and the Arizona Revised Statutes, I conclude that ADHS is authorized to execute a cooperative agreement with EPA for the Phase I investigative study.

If you have any questions, please contact me at (602) 255-1650.

Sincerely,

ROBERT K. CORBIN
Attorney General

JAMES DONALD VIEREGG
Assistant Attorney General
Environmental Protection Unit

JDV:lfc

Enclosures

cc: Dr. James E. Sarn
Mr. Harry Seraydarian

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# APPENDIX K

## COMMUNITY RELATIONS PLAN FORMAT AND SAMPLE PLAN

# APPENDIX K

# COMMUNITY RELATIONS PLAN FORMAT AND SAMPLE PLAN

## PURPOSE

This appendix has been provided to assist Regional personnel -- especially Regional Site Project Officers (RSPOs) and Regional Superfund Community Relations Coordinators (RSCRCs) -- and State staff -- such as State Project Officers (SPOs) and State Community Relations Coordinators (SCRCs) -- in developing Community Relations Plans (CRPs) for remedial sites.

## BACKGROUND

The Superfund community relations program is a two-way site-specific program for communication and information exchange which is implemented for every remedial response initiated under CERCLA. It must involve citizens from the affected communities and representatives from the Federal and State agencies taking part in the remedial response. The program's goal is to keep local citizens informed about planned and on-going remedial activities while also providing them an opportunity to comment on and supply information about the response.

Community relations activities may be the responsibility of either EPA or the State, depending upon which agency is taking the lead for the remedial response activities in question. For State-lead projects, this responsibility will be determined during negotiation of the Cooperative Agreement application covering the project, and may be assumed by either EPA or the State. For Federal-lead projects, EPA Regional community relations staff, with the assistance of RSPOs, will conduct the community relation program. In either case, a CRP must be developed and implemented for each Superfund remedial project.

A CRP is the planning, management, and budget document that specifies community relations activities to be undertaken at a site. As such, it is an essential part of remedial response activities. The CRP, however, must be based on on-site interviews with interested State and local officials, community residents, and media representatives. Only after obtaining a first hand understanding of the information needs and level of public concern at a site can a CRP be written to reflect the concerns of the community in question (see Section 2 of this appendix).

After completion of on-site community discussions and careful consideration of the information gathered, responsible staff will have sufficient information to prepare a draft CRP. The trigger point for preparing the draft CRP should be the onset of EPA and State negotiation of a remedial response agreement for the first project at the site in question. A CRP should include the following elements:

- A description of the site's background and history of community involvement at the site, as well as an outline of the key issues and community concerns
- Community relations objectives for the during the remedial investigation/feasibility study
- An explanation of the activities and techniques that will be used to keep the community informed of site activities and to elicit citizen input
- A provision that the public will be given a minimum three-week comment period to review the feasibility study prior to the selection of the recommended alternative and an explanation of how public input will be obtained during this period, such as a public meeting and/or written comments
- A list of affected and interested groups and individuals, their affiliations, addresses, and telephone numbers
- A list of technical and community relations staff responsible for each site task
- The community relations program site budget
- A work plan and implementation schedule which is integrated with the major technical activities to be undertaken at the site.

A draft plan must be submitted along with the draft agreement covering the first phase of remedial planning -- either a Cooperative Agreement application or a draft Memorandum of Understanding (MOU). The plan will form the basis for the complete CRP, which should be submitted with the final agreement package. If the project is to be undertaken in response to a State letter of request, a complete CRP must be developed and approved prior to the initiation of remedial activities at the site.

Before a remedial design or remedial action is implemented at the site, the responsible agency must revise the CRP to reflect the changing needs and concerns of the community and the additional requirements of the new project. The revised CRP must be submitted with either the Cooperative Agreement application or Superfund State Contract (SSC) that is negotiated to cover this phase of remedial response. More specific procedures for preparing the CRP and background the Superfund community relations program in general can be found in "Superfund Community Relations Policy," OERR, May 9, 1983, and *Community Relations in Superfund: A Handbook*, (interim version), OERR, September 1983.

## APPENDIX SUMMARY

For the use of concerned State and EPA Regional staff, this appendix contains the following guidance:

- On-site discussion guidance document
- CRP sample format
- Sample CRP.

The activities presented in Section 2, Community Relations Plan Sample Format, are general guidelines for preparing a CRP. In practice, however, needs of individual CRPs will vary. Every site presents special problems and every community has unique needs and expectations to consider. For this reason, a sample CRP has been provided in Section 3. Staff members preparing CRPs should tailor plans to reflect the needs of the site and the situation in question.

## 1. ON-SITE COMMUNITY RELATIONS DISCUSSION GUIDANCE

# COMMUNITY RELATIONS GUIDANCE FOR EVALUATING CITIZEN CONCERNS AT SUPERFUND SITES

# 1. INTRODUCTION

This document provides guidance for planning, conducting, and evaluating on-site discussions with concerned citizens and local officials at Superfund sites. These discussions provide the basis for assessing the nature and level of citizen concern at the site -- a requirement for all non-emergency Superfund response actions. Tasks described in this guidance may be performed by EPA regional personnel, state response staff, or EPA-supervised contractors.

Community relations activities must be based upon information derived from on-site discussions with concerned citizens and local public officials to ensure that EPA or the state responds to local concerns and major issues. Results of the on-site discussions should be incorporated into a community relations plan (CRP) -- the planning, management, and budget cornerstone of the community relations program for each site. Activities specified in the CRP are tailored to the level and nature of community concerns at the site.

**These on-site discussions are not a survey of citizen opinion.** Rather, they are information meetings conducted to provide community relations staff with the background information necessary to understand the site's history from the community's perspective, to identify concerned citizens, officials, and organized groups, and to evaluate the level and nature of citizen concern. This information is indispensable in preparing the CRP. The discussions also serve as the initial public input into response plans. Concerns identified in these discussions may be taken into account in developing technical response actions.

Information derived from on-site discussions may also be useful to the enforcement staff. At sites where enforcement staff are seeking responsible party cleanup, on-site discussions should be conducted and evaluated by the time notice letters are sent out, so that enforcement personnel may be informed of community concerns before entering negotiations with responsible parties.

Thus, these discussions are of critical importance in designing community relations programs that are tailored to a particular community. In turn, they can help in the design and implementation of response actions (including enforcement actions) that meet the community's special needs. They must, however, be conducted with care and discretion.

Section 2 of this document describes how to plan and prepare for on-site discussions. Section 3 offers a set of procedures that may be useful for conducting the discussions. Finally, Section 4 provides a framework for assessing the results of the discussions.

## 2. PLANNING AND PREPARATION

This section of the guidance discusses the planning and preparation that should precede discussions with citizens and local officials at the site. The work effort required for the activities described will vary from site to site, depending on the level of citizen concern and the site's technical complexity. On the average, however, planning and preparation for on-site discussions should require three days of work effort.

Prior to conducting the on-site discussions, the community relations staff should plan: (1) how to acquire information about the site and identify interested public officials and members of the local community; (2) how to contact interested officials, citizens, and organized groups; and (3) how to elicit information from these individuals and groups. These three phases of the planning process are discussed separately below.

### A. Acquiring Site Information and Identifying Interested Officials, Community Members, and Groups

To ensure that key individuals are contacted and that site issues are understood, certain steps should be performed to acquire necessary background information, including the following:

(1) Meeting with regional EPA and state technical staff to discuss known or suspected site problems, to identify interested officials and citizens, and to obtain other background information;

(2) Reviewing EPA regional office, headquarters and state files to obtain relevant memos, documents, and correspondence;

(3) Researching local newspaper articles for the names of community leaders and for a preliminary indication of major site issues;

(4) If EPA clearance has been obtained, contacting Congressional offices in Washington or the state, either by telephone or in person, to obtain additional background information, as well as to inform the offices that EPA or state staff or contractors will soon visit the site. Congressional staff can identify the most involved citizens and the major site issues on the basis of inquiries to their office. It is essential to obtain EPA clearance, however, before making such contact. (Staff in the local or district Congressional office nearest to the site may be included routinely among those with whom on-site discussions are held, as noted below.)

Performing these four steps in the order in which they are presented here should help maximize the efficiency with which this first phase of the planning process is carried out.

At most sites, some or all of the following types of individuals and groups may have concerns about the site or can provide valuable perspective on site issues. They should, therefore, be included among those to be considered for on-site discussions:

- Persons interested in the site, i.e., persons living in close proximity to the site and nearby property owners;
- State agency staff, such as health, environmental protection, or natural resources department officials;
- Local and state elected officials, such as the mayor, council members, local state legislators, or attorney general;
- Staff at Congressional or state legislators' district offices;
- County planning and health officials;
- Representatives of ad hoc citizen groups organized because of site issues;
- Local business representatives (e.g., from the Chamber of Commerce);
- Local civic groups;
- Neighborhood associations;
- Local chapters of environmental groups;
- Local educators and school administrators; and
- Media representatives.

It is important to encourage those members of the community who have been the most active with respect to the site to raise their concerns in on-site discussions.

## B. Contacting Interested Officials, Citizens, and Groups

Once the background activities of the first phase of the planning process are completed, community relations staff should draw up a list of persons to be contacted at the site and make arrangements to meet with them. In phoning those persons on the contact list, staff should explain that the purpose of the discussions is solely to obtain the views of community members on site problems and to explore the concerns and issues identified by citizens and local officials. Staff should stress that the discussions will not be used to provide information to the public about site problems or possible future site actions, but instead, that the purpose of the discussions is to assess the level and nature of community concerns, so that community relations activities appropriate to those concerns can be conducted and so that community concerns can be taken into account in planning response actions. The purpose of the discussions will usually be easily understood. Citizens and officials will generally not object to speaking to government staff who cannot provide them with findings on possible effects or a firm schedule for cleanup, although they may be disappointed not to receive such information. Rather, citizens and local officials are generally appreciative that someone from the government is willing to meet with them and listen to their views. They regard the discussions as an opportunity to voice their concerns and, perhaps, to have some effect on government decisions.

If possible, all meetings should,be scheduled over a period of no more than five days.

## C. Eliciting Information from Individuals and Groups

The final phase of the planning process is to draw up a brief and informal list of questions to guide the discussions with local officials and citizens. Such a list may help to ensure that the discussions are efficient yet comprehensive. These questions may serve as a reminder of the areas that should be covered in the discussions, the kinds of information that should be elicited, and any specific points that must be addressed. Because the on-site discussions should not be conducted as a survey, the questions listed in advance while planning the discussions need not be asked explicitly during discussions. Exhibit 1 presents examples of questions that may be useful in conducting on-site discussions.

In addition to preparing questions, community relations staff should determine whether there are any special matters that should not be publicly disclosed (for example, specific findings from enforcement investigations or preliminary cost estimates for cleanup). Program and enforcement staff should be consulted on this point before the on-site discussions are held.

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## EXHIBIT 1

## EXAMPLES OF QUESTIONS TO ASK IN ON-SITE DISCUSSIONS

(1) When did you first become aware of the release of hazardous substances at the site?

(2) How would you characterize the problems at the site?

(3) What contacts have you had with local, state, EPA and other officials about the site?

(4) What are your major concerns related to the site?

(5) What activities have you participated in, sponsored, or organized concerning the site?

(6) How can EPA or the state best provide you with information concerning response activities? Would you like to be included on a mailing list?

(7) What kind of information would be most useful to you (e.g., technical information, status reports on cleanup activities)? How frequently would you like to receive a progress report or fact sheet?

(8) Is there anything you wish to mention that we have not yet discussed?

(9) Can you suggest other individuals or groups that EPA or the state should contact for additional information or to identify other types of concerns?

## 3. CONDUCTING ON-SITE DISCUSSIONS

This section presents procedures that may be useful to EPA, the state, or contractor support staff in conducting on-site discussions with citizens and local officials. If possible, all discussions related to a specific site should be conducted within a five day period.

Once the discussions have begun, staff should try to:

- Make all appointments as scheduled;
- Arrange a follow-up conversation if additional time is needed with any official or citizen;
- Assure citizens and officials that all interviews will be held confidential, and that no specific statements will be attributed to any person without prior clearance;
- Have two community relations staffers present during the discussion, when possible, so that one can take notes while the other leads the discussion.

About 45 minutes to one hour should be allowed for a discussion with an individual. Less time will usually be required once the community relations staff have become familiar with the background of community involvement through previous discussions. If asked, staff should not hesitate to identify some of the other citizens or officials with whom discussions are being held.

Local reporters may, on occasion, ask to attend discussions between community relations staff and community leaders or officials. The attendance of reporters at these discussions should be discouraged, as it might inhibit a frank and open conversation. Reporters should be asked, instead, to meet separately with community relations staff. If they do attend discussions with officials, they should be included in the meeting and asked for their views and comments, which are valuable.

At the outset of any discussion with reporters, community relations staff should repeat that the purpose of the discussion is to collect information, not to answer questions, and that the community relations staff are not in a position, in any event, to provide new information on site problems or response plans.

Community relations staff must take special care to avoid making subjective comments about the site during the discussions and avoid conveying specific information that may raise citizens' or officials' expectations about response activities.

At the end of each discussion, staff should ask the citizen or official if he or she is interested in participating in future briefings, workshops, and meetings, and receiving prior notification of such activities by mail. In addition, the names of other individuals to contact in the community should be requested. After each discussion has been concluded, staff should write up a summary of the discussion as soon as possible.

When all the meetings have been held, staff should prepare a final list of all interested officials and citizens with pertinent titles and affiliations, addresses, and phone numbers. This list eventually will be included in the community relations plan for the site.

# 4. EVALUATING DISCUSSIONS

Based upon the discussion summaries and the notes from each meeting, community relations staff should evaluate the nature and level of citizen concern at the site. This evaluation will be incorporated into the CRP.

Community relations staff may assess whether community concern is high, medium, or low by considering the presence or absence of the following six characteristics, which have been found to be important indicators of community involvement and concern in past on-site investigations conducted by EPA:

(1) Children's health -- whether families in the community believe their children's health may be affected by hazardous substances;

(2) Economic loss -- whether local homeowners or businesses believe that, the site has caused or will cause them economic loss;

(3) Agency credibility -- whether the performance and statements of EPA and the state are viewed by the public as competent and credible;

(4) Involvement -- whether an active, vocal group leader (or leaders) has emerged from the community and whether the group leader has a substantial local following;

(5) Media -- whether events at the site have received substantial coverage by local, state, regional, or national media; and

(6) Number affected -- whether more than three or four households perceive themselves as affected by the site.

Some of these characteristics are more important than others in determining the level of community concern. For example, a perceived threat to children's health is a particularly strong indicator of a potentially high level of citizen concern at a site. If several of the above characteristics describe the affected community, the community relations staff have grounds for considering that the level of community concern at the site may be medium to high or has the potential to become medium to high.

In writing CRPs, following completion of these on-site discussions, it is important to maintain objectivity. Consideration should be given to the feelings of any citizens or officials mentioned. These plans will be circulated among the state and federal agencies involved in the response. They may also be read by members of the general public in the site community. Allegations or opinions expressed by those with whom discussions were held do not need to be presented in the plans unless they are directly relevant to the design of a community relations program. Descriptions of the personal backgrounds or political beliefs of individuals are unnecessary. Accusations of conflict of interest or of a complete absence of credibility among certain officials or agencies are serious charges that are not appropriate subjects for CRPs. Such charges should be directed to the proper EPA or state staff according to the standard procedures in such cases. In short, the information gathered in the on-site discussions should be carefully weighed and presented as objectively as possible. No CRP should become an issue itself in the community.

By planning, conducting, and evaluating the discussions in accordance with this guidance, community relations staff should gain a clear understanding of the level and nature of community concern at a site. Community relations staff should then be able to prepare an effective CRP and to tailor communications activities at a site to the needs and concerns of local citizens and officials.

## 2. COMMUNITY RELATIONS PLAN FORMAT

### COMMUNITY RELATIONS PLAN
### SAMPLE FORMAT

### A. Introduction

The opening paragraph of the CRP identifies the location of the release, the lead agency in the Superfund cleanup and in the community relations program, and the period of time covered by the plan.

### B. Site Background and History of Community Involvement

The background and history section begins with a brief site history and information on cleanup plans, as well as an enforcement profile, if it is likely to alter the technical schedule. This section also describes the history of community involvement, including descriptions of interested groups, their activities, past public meetings, and other inquiries or displays of concerns. The section concludes by summarizing the main public concerns and key issues that may affect the conduct of the cleanup. Concerns and issues likely to be raised in the future, as well as those raised in the past, are included.

### C. Site-Specific Objectives

All Superfund community relations programs have two major goals:

- Provide accurate, timely information about the response to the community; and
- Allow citizens to express their concerns to EPA and the State.

The purpose of this section of the CRP is to list specific objectives tailored to the technical response timing and the level of citizen concern at the site. Included in these objectives are the specific points in the technical response for which community relations activities are essential, and the specific decisions on which local input is essential.

### D. Community Relations Techniques

This section lists the communication activities to be conducted in each phase of the response. The activities specified should be closely tied to the specfic events in the technical response schedule (e.g., small group meetings or briefings could be scheduled at the initiation of the response action and during the comment period on the feasibility study.) Other examples of techniques that can be used in the Superfund community relations program are:

- Attending meetings and arranging workshops with citizen groups;
- Preparing fact sheets, progress reports, news conferences, and news releases; and
- Establishing an information repository.

This section must also specify how the three week comment period will be implemented for nonexpedited remedial actions. For any initial remedial measures (IRM), the plan must also (1) address how the community will receive prior notification of any site action and (2) state that a minimum two week comment period will be provided for any complex IRM recommended by a limited feasibility study.

This section should also detail how staff will keep citizens informed of past site activities and upcoming events on a regular basis. There should be provision for coordinating the community relations responsibilities of the federal, state, and local agencies, in addition to EPA, involved in the response.

### E. Workplan and Schedule

The workplan and implementation schedule display technical milestones and community relations activities along a time line. The time line maybe altered over the course of the Superfund response because most activities will correspond to technical milestones, not dates. The community relations activities should include a period for lead time to draft, circulate, review, and approve written materials and activity plans before the date of the activity.

### F. Budget and Staffing Plan

The budget and staffing plan details the EPA, other federal, and state agency staff responsible for each community relations activity. The staffing list should differentiate preparatory staff -- those who draft materials and arrange appointments and meeting space -- from primary staff responsibilities, such as making a presentation, editing and approving a fact sheet, or running a workshop. The workhours for each person responsible for an aspect of an activity are included, along with any travel costs, material costs, or contractor costs, for each activity.

### G. Appendix of public officials, interested groups and individuals, contractors, and EPA, federal, or state staff responsible for the site

Names of persons contacted during the on-site discussions, as well as others referred to in the conversations, are listed with their affiliation, if any, and telephone number. The appendix may be arranged under the headings of federal, state, and local officials, local groups, and interested individuals.

Attached is a copy of an approved community relations plan. Included with this plan is a memorandum from the Headquarters Superfund Community Relations Coordinator identifying areas in the plan that are lacking.

3. SAMPLE COMMUNITY RELATIONS PLAN

# COMMUNITY RELATIONS PLAN
# FOR REMEDIAL ACTION
# AT THE IMPERIAL SITES
# IMPERIAL, MISSOURI

(June 1983)

This Stage I community relations plan outlines the activities to be conducted during a Superfund remedial action at the Imperial sites in Jefferson County, Missouri. U.S. EPA Region VII has the lead responsibility for managing the remedial action, which consists of initial remedial measures, a remedial investigation, and a feasibility study. This plan was prepared in February 1983 and revised in June 1983.

## I. BACKGROUND AND HISTORY

### A. SITE HISTORY

Imperial, Missouri, a suburb of St. Louis, is an unincorporated town of about 6,000 middle-income families. The dioxin sites located in Imperial are nestled in a hilly, wooded area that is still being developed.

In February 1971, a salvage oil company owned by a Mr. Russell Bliss began hauling dioxin wastes from the now defunct Northeastern Pharmaceutical and Chemical Company (NEPACCO) in Verona, Missouri. The type of dioxin, scientifically named 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD), is an unwanted byproduct resulting from the manufacture of trichlorophenol, which was produced by NEPACCO as an intermediate in the manufacture of hexachlorophene.

The dioxin-contaminated wastes were mixed with waste oils and used to spray at least three horse arenas for weed and dust control. One of these arenas was at Bubbling Springs Ranch in Jefferson County. It was sprayed with contaminated oil in June and July 1971. Early in 1972, two horses died, and later in the year four more died. At the time, the cause of death was undetermined. As a precaution, however, 850 yards of arena soil was excavated in March 1973.

The excavated soil from Bubbling Springs Ranch was used as residential fill at the Minker residence and the Stout site (named after the contractor who did the excavation and who owned the property at the time). Approximately 20 truckloads of the soil were used to fill a steep ravine on the south end of the Minker house. The property is located on a ridge at the head of the watershed, and the fill area has mostly washed out into Romaine Creek. The Stout property is on the side of a ridge, and the contaminated soil was used to level off an area underneath two house trailers.

EPA first sampled the Imperial sites where the contaminated material had been used for residential fill in May 1982. On August 18, 1982, results from this limited sampling confirmed dioxin contamination. A more comprehensive sampling effort was conducted in October to determine the extent of contamination.

In November, results from the October sampling showed no contamination above 1 ppb from the Country Club subdivision. Five of the 53 samples taken at the Stout property had positive results (above 1 ppb); these ranged from 1.5 ppb to 22.2 ppb, the latter occurring at a depth of 10 feet.

The highest levels of dioxin contamination in the area were found in fill material at the Minker residence and down the slope behind the house. Of the 95 samples, 40 had positive results. The highest concentration found was 301 ppb.

In Romaine Creek, 78 of the 151 samples showed positive results. Concentrations of dioxin in sediments were highest (272 ppb) where drainage from the Minker property enters the creek. The concentration decreased to about 90 ppb 800 feet downstream, 10 ppb 2,000 feet downstream, and below 1 ppb 6,000 feet downstream.

Samples of dust from vacuum cleaner bags were collected from five area houses. Dioxin contamination was found only in the sample from the Minker residence, at 3.6 ppb.

Using these findings, risk assessments were prepared and were evaluated by EPA, CDC, and the State of Missouri. These three groups determined that six households with potential daily exposure through contact with the soil should be relocated. These households are identified in section I-C of this plan.

At the request of residents, additional sampling from households adjacent to the six relocatees was conducted in December 1982. Results are not yet available.

## B. COMMUNITY RELATIONS HISTORY

The following community relations activities have been conducted by EPA to date. Community issues, concerns, and participants are discussed in sections C and D, below.

May and June 1982: At the time of the first EPA sampling, engineers made door-to-door visits to talk with residents whose property was being sampled.

October 6 and 7, 1982: EPA staff toured the area and visited four households near the Minker site (staff could not contact two other households near the site) and one household near the Stout site.

October 6, 1982: A phone line to EPA was opened; from October to the present, approximately 30 residents have called EPA.

October 14, 1982: A public meeting was held at Mermac Heights Elementary School. Approximately 150 households in the vicinity of the sites were invited. About 175 persons attended. There was heavy press coverage and attendance by local and state officials. A fact sheet was distributed.

November 5, 1982: Dioxin Update No. 1 (stating the status of October sampling) was sent to approximately 150 households in the vicinity.

December 7, 1982: EPA and CDC made personal visits to the six households identified for relocation. Dioxin Update #2 was distributed door-to-door to approximately 150 families. This included October sampling results, maps of the sites that were sampled, action options, future plans, and notice of a public inquiry center.

December 8, 1982: A public inquiry center was opened at a nearby hotel for 5 days, 9 a.m. to 9 p.m. A press conference and news release presented the findings from the October sampling.

January 20, 1983: A spokesman for concerned citizens near the Minker site requested a meeting between residents and responsible officials. Forty-two citizens attended, as well as representatives from EPA, CDC, Missouri Division of Health, Missouri Department of Natural Resources, and a State of Missouri attorney. There was no press attendance. Remedial actions and citizen concerns were discussed. Handouts included a fact sheet, dioxin questions and answers, and a summary sheet of proposed actions.

January 29, 1983: A public hearing was held at Jefferson College in Hillsboro, called by Congressman Robert Gephardt. This was a general meeting concerning possible dioxin sites throughout Missouri. Meeting participants included: Regional and Headquarters EPA officials; FEMA; CDC; Missouri DNR and Health Division; State Senator Harriet Woods; State Representative Bob Feigenbaum; Dr. Ellen Silbergeld (Environmental Defense Fund); and representatives from the Minker site, Stout site, Country Club Manor, Times Beach, and Warren County. Media coverage was heavy. Informational handouts were distributed by EPA. The Coalition for the Environment (see Section C below) also distributed its February "Alert Newsletter."

## C. KEY PARTICIPANTS

1. At the most general level, there are approximately 150 households in the vicinity of the sites. They will be kept informed of major activities and findings. Several families have voluntarily moved out of the area because of their concerns.

2. Two primary organized groups have been identified. Personal contact will be maintained with these groups through their spokespersons.

   a. Country Club Manor; Gail Hanks, spokeswoman. About eight families, well-researched, actively involved. Chief concern is health effects from possible runoff from the Stout site. (See Section D for further discussion of issues.)

   b. West Rock Creek Hill; Mr. Abrahamson and Mr. Webb, spokesmen. Dennis Lynch is also a participant who attended the January 29 meeting called by Congressman Gephardt. About 12 families are involved, and have expressed concerns about health effects and economic impacts (property values, medical bills).

3. Eight households nearest the Minker site have been offered relocation:

   a. Harold Minker household--two adults, one child. They have temporarily relocated.

   b. John Vickers household--two adults, three children. This is the first household downslope from the fill area. They have been temporarily relocated.

   c. George McArthy household--two adults. They are in direct line of fill area drainage, immediately below the Vickers house.

   d. Dennis Lynch household--two adults, two children.

   e. Doug Keane household--this is a rental property that is currently vacant.

f. James Haeger household--two adults. Next door neighbors to Minkers on W. Rock Creek Road.

g. Joseph Korenak household--first house south of Minker residence, on west side of Rock Creek Road.

h. Albert Edwards household--located immediately adjacent to Romaine Creek, approximately 1/3 mile north of the Minker site.

4. Personal contact will be maintained with ~~five~~ eight households adjacent to the seven identified for relocation:

- Crismon
- Davis
- Abramson
- Henderson
- Webb

5. Three households near the Stout site have been offered relocation:

- Martin Hutchison (next door to site; have already temporarily relocated)

- James Cisco (2 doors down from site; have already temporarily relocated)

- Edward Baczynski (across street; have already temporarily relocated)

6. Personal contact will be maintained with two households near the Stout site that have expressed concerns:

- Jack Sutton (owns trailer house on Stout site; is the developer--NHI Development Company--of Country Club Manor subdivision)

- Peter Vogt (owns part of Stout site; lives further up the road)

7. Other areawide groups that are involved in the dioxin situation in Missouri are:

- Coalition for the Environment (based in St. Louis; present at January 29 meeting)

- Missourians against Hazardous Waste (based in Excello, Missouri)

- Environmental Defense Group (based in Washington, D.C.; Dr. Ellen Silbergeld attended January 29 meeting)

- Sharon Rogers--attended January 29 meeting as a representative of the people of Warren County (where Bob's Home Service, the only licensed hazardous waste landfill in Missouri, is located)

- Mr. Layne Jumper--Times Beach site representative who attended the January 29 meeting.

8. The local and national press has been giving extensive coverage to events at these sites.

9. Local, state, and Federal officials: Congressman Gephardt has been actively involved in this issue, and has been contacted by a number of residents. He called the public hearing on January 29, 1983. State representative Bob Feigenbaum and State Senator Harriet Woods have also been particularly involved in dioxin and hazardous waste issues in Missouri.

## D. KEY ISSUES AND CONCERNS

1. Health Effects. What tests can be taken? Who will pay for tests and medical expenses? What are the effects of exposure?

2. Property Values. How can compensation be received for lower property values? How are Federal enforcement actions related to residents' legal position? Can property taxes be reduced to reflect lower value? After cleanup, can property deeds state that the area is clean and safe? What will be the effects on local developers?

3. Additional Sampling. What are the results of the December samplings? Some people have requested that their property should also be sampled. Some residents believe that wellwater sampling should be conducted, and that sampling should be done for PCBs and other possible toxic substances.

4. Relocation. Some residents living downwind from the sites believe they should be relocated immediately because they are subject to exposure. Will relocation of some households be necessary during cleanup? What are the details of the relocation and fencing process (insurance, fire-fighting access, security)?

5. Remedial Action and Cleanup: What is the schedule for remedial actions and cleanup? What will the level of cleanup be? How will citizens be involved in selecting remedial alternatives? Will con-

taminated soil be contained onsite or removed? What will the restoration and close-out procedures be? There is a strong feeling by some people that containing and securing the site is not an adequate cleanup measure; if this solution is chosen, they will insist on being bought out on the basis of lowered property values and future health risks. If soil is removed, will the truck traffic cause road deterioration? What traffic controls will be provided? How will equipment used during the cleanup be decontaminated? How will residents be protected from dust? Can downwind residents be relocated during on-site action?

It should be emphasized that people's two main concerns are health effects and economic loss. It is perhaps relevant to note that in August 1982, a Federal court awarded over $58 million in damages to workers whose health was affected by exposure to dioxin during the cleanup of a 1979 train derailment in Sturgeon, Missouri. Several residents in the Imperial area have filed suit for damages, and more litigation is expected.

Based on the issues, concerns, and citizen participation and perceptions that have been identified, the level of community concern at the Imperial sites should be assessed as high.

## E. PROPOSED REMEDIAL ACTIONS AND SCHEDULE

The activities described below will be conducted pursuant to a written contract between EPA and the State of Missouri. That contract defines the responsibilities of EPA and the State and provides for funding of the proposed actions. EPA is the lead agency and will be responsible for performing all activities at the site other than the relocation of the residents.

- Initial Remedial Measures - Temporary relocation will be offered to affected residents by the State of Missouri. EPA contractors will post warning signs around the Minker and Stout residential areas and along Romaine Creek. Before the posting, access agreements will be obtained from property owners and surveys of the area will be conducted.

- Remedial Investigations - Additional data will be collected. Aerial photographs of the area will be taken to prepare topographic maps. Additional soil samples from the Stout residential area will be collected and analyzed to accurately define the contaminated area. A hydrogeological study of

Romaine Creek will be conducted by the U.S. Geological Survey to provide information about the geology and groundwater in the area. At this time, no additional sampling is planned for the Minker area or Romaine Creek.

- Feasibility Study - A preliminary screening of alternatives will be conducted to arrive at a permanent remedy based on costs, environmental effects, environmental protection, and engineering feasibility. A more detailed evaluation will then be made of those alternatives which appear feasible. A selection of the most appropriate site-specific alternative will then be made. Citizen input will be solicited before the selection of the final remedy.

## II. OBJECTIVES OF THE COMMUNITY RELATIONS PLAN

1. Ensure that local residents and state and local officials are kept informed of possible actions under consideration and the reasons for these actions.

2. Ensure that local residents, state and local officials, and concerned groups are notified of major findings, activities, and decisions in a timely and effective way. Notify residents and officials before notice is given to the media.

3. Provide the media with timely, detailed, accurate information about the initial response, remedial investigation, and feasibility study.

4. Effectively address citizen inquiries and concerns; ensure that the best possible information is provided. Provide a central, consistent source(s) for people to contact.

5. Provide local residents and state and local officials with the opportunity to comment on remedial action alternatives identified during the feasibility study, before final selection of a remedy.

6. Use identified public concerns as one criterion for the evaluation of alternatives during the feasibility study.

7. Keep aware of changes in community concerns, information needs, and activities, and modify this community relations plan as necessary to address these changes.

## III. TECHNIQUES TO BE USED TO MEET OBJECTIVES

The following community relations techniques fulfill the objectives listed above. The purpose of each technique and its application at certain stages of the technical work are discussed. The workplan and schedule shown in Section IV shows these community relations techniques in relation to technical milestones.

| Technique | Objectives |
|---|---|
| 1. Personal contact with residents | Door-to-door or by telephone. To inform target residents (relocatees; spokespersons for two community groups; closest neighbors) of major findings, activities, and decisions. Should occur before fact sheets or other public information is released. |
| 2. Briefing of local and state officials | In person or by telephone. Inform appropriate officials of plans and developments on continuing basis. CIGL will maintain liaison with public officials. |
| 3. Public consultations | Informal discussions with small groups of concerned citizens (two identified groups and any others that arise) to review issues and answer questions. Provide medical experts or other experts as appropriate. Schedule during the feasibility study to present the alternatives and solicit input; also schedule upon request. |

| Technique | Objectives |
|---|---|
| 4. Fact sheets and updates | To be distributed to 150 households in vicinity as a source of accurate information concerning findings, plans, activities. Also to be distributed at meetings and consultations, to the media, and to other appropriate parties (such as active environmental groups). Ensure that fact sheets are mailed to residents who have moved from the area because of the dioxin situation. Coordinate distribution with other information releases. Invite comments and provide further sources of information where appropriate. |
| 5. Press releases | To announce milestones in activities or impart necessary information. Will be concise, timely, and accurate. Dates of release will be strategically planned so release doesn't precede appropriate local notification. |
| 6. Press conferences (optional) | To announce important findings or actions. High-level state and Federal officials may participate. Could be conducted after remedial action plan is approved and prior to construction. |
| 7. Health advisory number (Dioxin Program, St. Joseph Hospital, St. Louis--sponsored by CDC/Missouri Department of Health) | To gather and provide information about health concerns of public. Number should be included in fact sheets or otherwise be made known to local residents and officials. |

| Technique | Objectives |
|---|---|
| 8. EPA toll-free telephone line (Office of Public Affairs, EPA Region VII, Kansas City) | (Office To provide a direct line of communication for inquiries and concerns. Number should be included in fact sheets or otherwise be made known to local residents and officials. |
| 9. Onsite inquiry office (optional) | To provide an onsite source of information when controversial findings are released or when a great deal of public interest is anticipated. |
| 10. Regional information office (optional, for St. Louis region) | To provide information about this and other dioxin sites; to provide personal, easily accessible, and consistent contact to concerned citizens. |
| 11. Summary of public concerns | For use by EPA staff during feasibility study; public concerns are to be used as one criterion for the evaluation of alternatives. |
| 12. Interim report | To provide EPA Headquarters with a summary of public inquiries and concerns, the responses provided, and the community relations activities conducted. |

## IV. WORKPLAN AND SCHEDULE*

| | Technical Milestones | | | | |
|---|---|---|---|---|---|
| Community Relations Techniques | Release of December Sampling Results | Posting of Sites | Remedial Investigation | Evaluation of Feasible Alternatives | Selection of Remedy |
| 1. Personal contact with residents | ● | ● | ● | ● | ● |
| 2. Briefing of local/state officials | (ongoing) | | | | |
| 3. Public consultations | | | | ● | |
| 4. Fact sheets and updates | ● | ● | ● | ● | ● |
| 5. Press releases | | ● | ● | ● | ● |
| 6. Press conferences | (optional, as appropriate) | | | | |
| 7. Health advisory number | (ongoing) | | | | |
| 8. EPA telephone line | (ongoing) | | | | |
| 9. Onsite inquiry office | (optional, as appropriate) | | | | |
| 10. Regional information office | (optional, as appropriate) | | | | |
| 11. Summary of public concerns | | | | ● | |
| 12. Interim report | | | | | ● |

---

*The schedule presented here is relative to technical milestones; the actual timing can be specified when the technical work schedule is made final.

## V. BUDGET AND STAFFING PLAN

(To be provided by EPA)

## APPENDIX: NOTIFICATION LIST (Available upon request)

A. Local officials
B. Interested or affected parties and organizations
C. Media

# APPENDIX L

# SAMPLE QUALITY ASSURANCE/QUALITY CONTROL PLAN

(RESERVED)

# APPENDIX M

## SAMPLE SITE SAFETY PLAN

(RESERVED)

# APPENDIX N

## INSTRUCTIONS FOR USING SUPERFUND LETTER OF CREDIT ACCOUNT NUMBERS UNDER COOPERATIVE AGREEMENTS

### PURPOSE

This appendix has been provided to familiarize EPA Regional and Headquarters staff and State officials with the special procedures that have been developed for setting up Letter of Credit accounts, drawing down funds, and reporting drawdowns. These instructions supplement general instructions on the use of Letters of Credit (LOCs) found in EPA's Letter of Credit Users Manual.

### BACKGROUND

The most frequent method of transferring CERCLA funds to a State under a remedial Cooperative Agreement is through an existing EPA Letter of Credit. When this method is used, EPA credits to the State's LOC sufficient funds to cover EPA's share of costs under the Cooperative Agreement. In crediting CERCLA money under Cooperative Agreements, EPA establishes separate accounts for each activity included in the Agreement SOW. The State may then "draw down" funds from each appropriate LOC account to meet EPA's share of costs for immediate cash needs for each activity. At the same time, the State should provide its own share of costs for the remedial activities.

General guidelines for using LOCs have been developed and are available in EPA's Letter of Credit Users Manual. The manual describes both EPA's responsibilities for establishing LOC accounts and State drawdown and reporting procedures. Because of the increased accountability needed for expenditures under the Superfund program, EPA has also developed the system described in this appendix.

### APPENDIX SUMMARY

This appendix describes procedures to be used by States in drawing down funds from an LOC account established under a Superfund remedial Cooperative Agreement. A key component is the Superfund account number, which identifies the general purpose of each expenditure. This appendix explains how the Superfund account number is used in:

- Setting up the LOC account
- Drawing down funds
- Reporting drawdown activity.

State and EPA staff responsible for managing remedial sites should carefully review the contents of this appendix to ensure that they implement proper procedures.

# INSTRUCTIONS FOR USING SUPERFUND LETTER OF CREDIT ACCOUNT NUMBERS UNDER COOPERATIVE AGREEMENTS

## 1. BACKGROUND

Hazardous Substance Trust Fund transactions receive close OMB, Congressional, and industry scrutiny. The financial records from these transactions must allow an accurate determination of the required State cost share and must support any cost recovery actions. Therefore, management of Superfund requires a more detailed accounting structure than is usually developed for other EPA programs. In response to this need, EPA has designed a system which ensures that accurate cost records are maintained for each individual site and that financial aspects of all Superfund projects are properly monitored and controlled.

Because of the special accounting and control needs of Superfund, the ten-digit EPA account number has been modified to indicate specific sites and activities. The number allows EPA to know the year in which the obligation was made, the site's identity, the Region in which the site is located, and the basic type of activity being performed.

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Example: | 3 | T | F | A | 7 | 2 | 3 | L | 4 | 2 |
| Position: | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |

| Position | Meaning |
|---|---|
| 1 | Fiscal Year Transaction Initiated (3 = 1983) |
| 2, 3, 4 | Program Element (TFA = Superfund) |
| 5, 6 | Allowance Holder (72 = Headquarters program office) |
| 7 | Regional Identifier (e.g., 3 = Region 3) |
| 8 | Activity Codes (e.g., L = Remedial Planning) |
| 9, 10 | Site Identifier (e.g., site number 42) |

## 2. SETTING UP THE LETTER OF CREDIT ACCOUNT

When a Cooperative Agreement is negotiated, the specific activities and subactivities the State will perform are identified in the final Agreement. An estimated breakdown of costs by site and activity is included. The appropriate subactivities are summed to provide activity totals, and the activities are summed to provide the award total (see Exhibit N-1 for a list of activities). The dollars are then obligated separately in the Agency's Financial

Management System for each activity (the 8th digit will vary in the account number) included in the Agreement. LOC accounts established for the recipient must identify these separate account numbers in the Cooperative Agreement.

### 3. DRAWING DOWN FUNDS

The recipient may only draw down funds from an LOC account number for work performed at the corresponding site and for the corresponding activity. For example, remedial planning funds can be used only for remedial planning activities, and so on. When a drawdown occurs, the recipient must show both the Agreement number and the EPA account number on the back of the voucher (Form TFS-5401). This is to indicate the activity and the site against which a specific dollar amount is being charged. The specific activities to be performed are identified in the Agreement, as is the appropriate EPA account number.

When funds under a specific activity have been exhausted but the activity has not been completed, the recipient may not draw down from another activity's or another site's account code without written permission from EPA. Written permission can be obtained through the following procedure:

1. The recipient writes a letter to the EPA Regional Site Project Officer requesting and justifying the change.
2. The Regional Site Project Officer agrees with and signs this letter.
3. If the Cooperative Agreement has been awarded by EPA Headquarters and has not been subsequently transferred to the Region by the EPA Headquarters Award Official, the letter is forwarded to the Office of Emergency and Remedial Response (OERR) in EPA Headquarters for approval. If the Agreement has been awarded by or transferred to the EPA Region, the letter should be submitted to the Regional Award Official.
    a. Changes in Headquarters Cooperative Agreements will be approved in the following manner: OERR approves the letter and sends it to the Grants Administration Division (GAD) for processing. GAD sends an assistance amendment (EPA Form 5700-20B) to the recipient for signature. The recipient signs

the amendment and then returns it to GAD, which forwards it to the Financial Management Division.

b. Changes in Regional Cooperative Agreements will be approved in the following manner: Any staff approvals required under the Region's internal procedures will be obtained. The letter will then be sent to the Award Official. Regional grants personnel will prepare an assistance amendment (EPA Form 5700-20B) and send it to the recipient for signature. The recipient signs the amendment and returns it to the Award Official for processing.

4. Within approximately ten (10) days of receipt of the signed copy of EPA Form 5700-20B, the recipient may draw down funds.

Within 90 days after completion of a subactivity, the State is required to complete a Financial Status Report (Form 269) and submit it to the EPA Regional Site Project Officer. If money remains in an account after completion of an activity, the recipient may not use it for work performed under another activity or at another site. Instead, these funds must be either 1) returned to EPA, or 2) redistributed to another activity or site through the procedures outlined above. In the latter case, however, EPA may choose to deny the request to switch funds and deobligate the money altogether.

## 4. REPORTING

The above requirement does not eliminate the need for quarterly and project completion reporting as specified elsewhere in the Cooperative Agreement. A financial Status Report (Form 269), shown in Exhibit N-2, should be submitted at the end of each subactivity. In completing this report, the preparer should identify each subactivity on line 10, PROGRAMS/FUNCTIONS/ACTIVITIES (e.g., Remedial Investigation/Feasibility Study, Remedial Design and so on), and show the cost breakdown by each subactivity in columns 10a through 10m.

## EXHIBIT N-1
## SUPERFUND REMEDIAL ACTIVITIES
## CODE LIST FOR COOPERATIVE AGREEMENTS

| CODE | DESCRIPTION |
|---|---|
| L | REMEDIAL PLANNING - Consists of the following subactivities:<br>• Remedial Investigation/Feasibility Study - Investigate extent of problem and provide data to define and assess the merits of alternative remedial actions. Evaluate and analyze remedial alternatives, including initial remedial measures, and recommend a cost-effective approach; perform environmental assessments.<br>• Remedial Design - Develop final plans, specifications, and documents necessary to implement the selected remedial action. |
| R | REMEDIAL IMPLEMENTATION - Consists of the following subactivities:<br>• Remedial Action - The actual implementation, following design, of a selected source control and/or off-site remedial measure.<br>• Operation and Maintenance - Operation and maintenance of the completed remedy, for a period not to exceed 1 year.<br>• Initial Remedial Measure - Includes construction of fences, stabilization of dike or waste impoundments, temporary provision of alternative water supplies and removal or disposal of drums in situations where no more than minimal engineering design services are required to prepare bid packages; may be undertaken at different stages of the remedial planning process. |
| A | SUPPORT AND MANAGEMENT - This activity is not site-specific and is not cost-shared during remedial planning. It may only be used for Cooperative Agreements covering more than one site. It includes all non-site-specific management and administrative support, report writing, contingency planning, and technical assistance which cannot be directly attributed to a specific site. |

(Note: Superfund accounting codes also cover intramural funds and other activities.)

EXHIBIT N-2

# FINANCIAL STATUS REPORT

*(Follow instructions on the back)*

1. FEDERAL AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED

2. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER

OMB Approved
No. 80 R0180

PAGE OF PAGES

3. RECIPIENT ORGANIZATION *(Name and complete address, including ZIP code)*

4. EMPLOYER IDENTIFICATION NUMBER

5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER

6. FINAL REPORT ☐ YES ☐ NO

7. BASIS ☐ CASH ☐ ACCRUAL

8. PROJECT/GRANT PERIOD *(See instructions)*
FROM *(Month, day, year)*
TO *(Month, day, year)*

9. PERIOD COVERED BY THIS REPORT
FROM *(Month, day, year)*
TO *(Month, day, year)*

10. STATUS OF FUNDS

| PROGRAMS/FUNCTIONS/ACTIVITIES ► | (a) | (b) | (c) | (d) | (e) | (f) | TOTAL (g) |
|---|---|---|---|---|---|---|---|
| a. Net outlays previously reported | $ | $ | $ | $ | $ | $ | $ |
| b. Total outlays this report period | | | | | | | |
| c. *Less:* Program income credits | | | | | | | |
| d. Net outlays this report period *(Line b minus line c)* | | | | | | | |
| e. Net outlays to date *(Line a plus line d)* | | | | | | | |
| f. *Less:* Non Federal share of outlays | | | | | | | |
| g. Total Federal share of outlays *(Line e minus line f)* | | | | | | | |
| h. Total unliquidated obligations | | | | | | | |
| i. *Less:* Non Federal share of unliquidated obligations shown on line h | | | | | | | |
| j. Federal share of unliquidated obligations | | | | | | | |
| k. Total Federal share of outlays and unliquidated obligations | | | | | | | |
| l. Total cumulative amount of Federal funds authorized | | | | | | | |
| m. Unobligated balance of Federal funds | | | | | | | |

11. INDIRECT EXPENSE
a. TYPE OF RATE *(Place "X" in appropriate box)* ☐ PROVISIONAL ☐ PREDETERMINED ☐ FINAL ☐ FIXED
b. RATE
c. BASE
d. TOTAL AMOUNT
e. FEDERAL SHARE

12. REMARKS: *Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.*

13. CERTIFICATION
I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL

TYPED OR PRINTED NAME AND TITLE

DATE REPORT SUBMITTED

TELEPHONE *(Area code, number and extension)*

269-101

STANDARD FORM 269 (7-76)
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# INSTRUCTIONS

Please type or print legibly. Items 1, 2, 3, 6, 7, 9, 10d, 10e, 10g, 10i, 10l, 11a, and 12 are self-explanatory, specific instructions for other items are as follows:

| *Item* | *Entry* |
|---|---|
| 4 | Enter the employer identification number assigned by the U.S. Internal Revenue Service or FICE (institution) code, if required by the Federal sponsoring agency. |
| 5 | This space is reserved for an account number or other identifying numbers that may be assigned by the recipient. |
| 8 | Enter the month, day, and year of the beginning and ending of this project period. For formula grants that are not awarded on a project basis, show the grant period. |
| 10 | The purpose of vertical columns (a) through (f) is to provide financial data for each program, function, and activity in the budget as approved by the Federal sponsoring agency. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the totals of all programs, functions or activities should be shown in column (g) of the first page. For agreements pertaining to several Catalog of Federal Domestic Assistance programs that do not require a further functional or activity classification breakdown, enter under columns (a) through (f) the title of the program. For grants or other assistance agreements containing multiple programs where one or more programs require a further breakdown by function or activity, use a separate form for each program showing the applicable functions or activities in the separate columns. For grants or other assistance agreements containing several functions or activities which are funded from several programs, prepare a separate form for each activity or function when requested by the Federal sponsoring agency. |
| 10a | Enter the net outlay. This amount should be the same as the amount reported in Line 10e of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report. |
| 10b | Enter the total gross program outlays (less rebates, refunds, and other discounts) for this report period, including disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees. |
| 10c | Enter the amount of all program income realized in this period that is required by the terms and conditions of the Federal award to be deducted from total project costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrual basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total award, explain in remarks, the source, amount and disposition of the income. |
| 10f | Enter amount pertaining to the non-Federal share of program outlays included in the amount on line e. |
| 10h | Enter total amount of unliquidated obligations for this project or program, including unliquidated obligations to subgrantees and contractors. Unliquidated obligations are:<br>Cash basis—obligations incurred but not paid;<br>Accrued expenditure basis—obligations incurred but for which an outlay has not been recorded.<br>Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance. |
| 10j | Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i. |
| 10k | Enter the sum of the amounts shown on lines g and j. If the report is final the report should not contain any unliquidated obligations. |
| 10m | Enter the unobligated balance of Federal funds. This amount should be the difference between lines k and l. |
| 11b | Enter rate in effect during the reporting period. |
| 11c | Enter amount of the base to which the rate was applied. |
| 11d | Enter total amount of indirect cost charged during the report period. |
| 11e | Enter amount of the Federal share charged during the report period.<br>If more than one rate was applied during the project period, include a separate schedule showing bases against which the indirect cost rates were applied, the respective indirect rates the month, day, and year the indirect rates were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date. |

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# APPENDIX O

## SAMPLE RECORD OF DECISION

### PURPOSE

This appendix has been provided to assist EPA staff in assembling a Record of Decision (ROD) by summarizing requirements for RODs and illustrating possible ROD components.

### BACKGROUND

A ROD is the document used to obtain EPA approval for a remedial action. Pursuant to delegations of CERCLA authority, the Assistant Administrator for Solid Waste and Emergency Response (AA, SWER) selects the remedial action to be implemented at a site. Although agreements for remedial response activities will be negotiated and executed in the Regions, the AA retains this authority. Because the ROD will be used as the basis for selection of a remedy, it should provide sufficient information to define the remedial alternatives and the site requirements.

Authority to select initial remedial measures (IRMs) has been delegated to Regional Administrators (RAs). Selection of IRMs not involving off-site transport, storage, or disposal may not require a full ROD package; however, it must be incorporated into an Action Memorandum or other document signed by the RA and must meet the requirements outlined in the National Contingency Plan (NCP). IRMs that involve off-site transport, storage, or disposal must be selected using RODs and must also comply with the NCP.

The ROD will be sent from the appropriate RA to the AA, SWER, recommending either a remedial option or the "no action" alternative for the site. In either case, the ROD package should be developed by the Regional Site Project Officer (RSPO), with assistance from the State Project Officer (SPO) and the Regional Superfund Community Relations Coordinator (RSCRC). Subsequent to obtaining Regional concurrences and approval, RODs should be sent to the Hazardous Site Control Division in EPA Headquarters for necessary review, concurrences, and coordination of final AA approval.

Each ROD should identify supporting documentation reviewed in selecting the remedy, define the recommended remedy, and document necessary declarations and the approval signature of the appropriate official (either the

AA, SWER or the RA for IRMs). The following declarations must be made on the ROD cover page:

- EPA has consulted with the State before determining the appropriate remedial action (CERCLA section 104[c][2])
- The action being taken is a cost-effective solution and appropriate when balanced against the need to use Fund money for other sites (CERCLA section 104[c][2]), and
- The proposed remedy mitigates and minimizes damage to and provides adequate protection of public health, welfare, and the environment.

When off-site disposal is part of the proposed remedial action or IRM, the declaration required by CERCLA section 101(24) should be included, as appropriate.

The ROD should also contain a section concerning O&M. This section will briefly outline available information about O&M needs associated with the selected remedy and will document approval of EPA's participation in O&M by containing the following:

- Identification of O&M necessary for the selected remedy, including on-site monitoring
- Length of time O&M will be required
- Total estimated O&M costs
- Identification of the State agency that will be responsible for O&M.

It should also include the RA's recommendation of the period of time (up to a maximum of one year) during which EPA will share in the costs of O&M. In making this recommendation, the RA should consider the individual circumstances of both the site in question and the State involved. Decision criteria may include the type and cost of the O&M, the financial capability of the State, and the importance of the O&M activities to the effectiveness of the remedy. Information contained in this section will also be considered in the AA's selection of remedy, so that the cost-effectiveness of remedial alternatives can be judged on total lifecycle costs.

Additional components of the ROD package may include:

- A summary sheet, which can be used to brief the AA (or RA) on the proposed remedy and site requirements
- A detailed narrative summary describing the site, its enforcement status, and the rationale for recommending a remedial action
- More detailed background information on the site
- Other supporting documentation, such as the feasibility study report and a responsiveness summary that contains a review of public inquiries and comments, the issues and concerns raised, and how EPA or the State has responded (see Community Relations Policy, OSWER, May 9, 1983, reproduced in Appendix P)
- A transmittal memorandum, containing the RA's recommendations to the AA, and the estimated costs of the recommended remedy, including EPA's share of O&M costs for the recommended period.

The package should also highlight any potential problems or policy issues affecting the AA's decision and should demonstrate close coordination among EPA, the State, and the local community.

## APPENDIX SUMMARY

This appendix contains portions of the ROD approved for the Lehigh Electric and Engineering site in Pennsylvania. The following contents of the ROD package are provided:

- ROD
- ROD summary sheet
- A narrative summary of the site and possible remedial alternatives
- A map, geographically locating the site
- Public comments
- A breakdown of the capital costs for the remedial alternatives.

Because of space limitations, a petition from residents living near the site and the feasibility study report are not reproduced here.

The ROD shown here should be used only as an example. Appropriate contents of a ROD package will vary depending upon the needs of the site.

FEB [illegible] 1983

# RECORD OF DECISION
# REMEDIAL ALTERNATIVE SELECTION

**Site:** Lehigh Electric and Engineering Company, Inc. Old Forge,
Lackawanna County, Pennsylvania

## Documents Reviewed

I have reviewed the following documents describing the analysis of cost-effectiveness of remedial alternatives for the Lehigh Electric Site:

- Study titled "Remedial Feasibility Report, Lehigh Electric and Engineering Site, Old Forge, Pennsylvania", November, 1982.
- Study titled "Remedial Field Investigation Report, Lehigh Electric and Engineering Site, Old Forge, Pennsylvania", September, 1982.
- Staff summaries and recommendations
- Recommendation by the Pennsylvania Department of Environmental Resources.

## Declarations

Consistent with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, and the National Oil and Hazardous Substances Contingency Plan, I have determined that the excavation of contaminated soils and debris and their transportation to an EPA approved landfill for secure burial provides an appropriate level of clean-up. The action taken is a cost-effective remedy, and it effectively and reliably mitigates and minimizes damage to, and provides adequate protection of public health, welfare and the environment. I have also determined that the action taken is appropriate when balanced against the need to use Trust Fund money at other sites. In addition, the chosen remedy complies with the requirements of Section 101(24) of CERCLA because off-site disposal is more cost-effective than potential onsite remedies and necessary to protect public health and the environment.

Michael A. Brown
Acting Assistant Administrator
Office of Solid Waste and Emergency Response

# REMEDIAL IMPLEMENTATION ALTERNATIVE SELECTION
# LEHIGH ELECTRIC AND ENGINEERING SITE
# OLD FORGE, LACKAWANNA COUNTY, PENNSYLVANIA

## Record of Decision Summary Sheet

EPA has completed the following remedial Superfund activities at the Lehigh Electric Site located in Old Forge, Pennsylvania.

| Activity | Date Completed |
|---|---|
| Phase I Clean-up of Site (equipment removal) | October, 1982 |
| Phase II Site Investigation Report (soil removal) | September, 1982 |
| Phase II Feasibility Study Report | November, 1982 |
| Public Meeting | January 10, 1983 |

Region III has reviewed the information in each report and has given careful consideration to the comments received during the public comment period. Based on our review, EPA Region III has determined that the following actions at the site are cost-effective and effectively mitigate and minimize damage to and provide adequate protection of public health, welfare, and the environment.

| Action | | Estimated Cost |
|---|---|---|
| Excavation and Off-Site Disposal | | $5,761,000 |
| Demolition of Buildings | | $190,000 |
| Backfilling, Grading, and Vegetating of Site | | $450,000 |
| | Total | $6,401,000 |

Monitoring and maintenance costs for the site are estimated to be $46,000 (present worth dollars) for a period of thirty years.

FEB 0 1 1983
Date

Peter N. Bibko
Regional Administrator

## NARRATIVE SUMMARY

### History

The Lehigh Electric and Engineering Company Site, located just east of the intersection of South Main and Howard Streets, in Old Forge, Pennsylvania encompassess approximately 6.4 acres of property adjacent to the Lackawanna River (see Attachment A). The site was initially a portion of a coal processing facility, but since the early 1960's has been used by Lehigh Electric as an electrical equipment repair and storage yard. The hazardous condition existing at the site was created by the indiscriminate handling and disposal of dielectric fluid containing polychlorinated biphenyls (PCBs).

The Environmental Protection Agency (EPA) was first notified of the site in March of 1981 by an anonymous source. The Regional On-Scene Coordinator found that elevated levels of PCB's were present in the soil (110,000ppm) and determined that the site must be secured. In April of 1981, a sixfoot high chain-link fence was erected around the perimeter of the site. By June of 1981, the OSC had secured and assessed the site, determined that PCB contamination did indeed exist, and that the contamination did not migrate off-site to nearby residential areas. At that point, it was decided that no further emergency activity was needed at the site, and that remedial clean-up activity under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) should be pursued.

Funding under CERCLA was authorized in October of 1981. Roy F. Weston, Inc. was tasked to perform the site engineering work. The strategy was to perform the clean-up in two phases, since we had to deal not only with contaminated medium (in this case, soil), but also with the source of the PCB contamination, the thousands of pieces of electrical equipment on-site.

Phase I of the clean-up (equipment removal) was "fast-tracked". Upon completion of the Site Investigation/Feasibility Study by Weston, the U.S. Army Corps of Engineers, working under an Interagency Agreement, assisted EPA in the design review and were responsible for assembling a bid package and procuring the clean-up contractor. In July of 1982, CECOS International was awarded the contract for Phase I clean-up. Removal of all surface equipment and debris (except buildings) was completed in October of 1982.

### Current Status

The Phase II Site Investigation was performed by Weston. The objective was to determine the degree and extent of soil contamination. Generally, it was found that PCBs are concentrated in the surface soil layers (0 to 2 feet), with concentrations decreasing with depth. Concentrations in the soil samples ranged from undetectable (less than 0.1 ppm) to 110,000 ppm. In general, most levels were less than 500 ppm and quickly dropped off to less than 50 ppm at increasing depths. The highest contamination was found in surface soil samples. The deepest levels at which PCB concentrations of 50 ppm are found are 10 and 15 feet below the surface. Analytical results of samples taken from the Lackawanna River and wells drilled on-site indicate that the site is not measurably impacting the surface or ground water.

After completion of the site investigation, work on a feasibility study began. During the initial phase of the feasibility study, remedial options which could be utilized for the clean-up of contaminated soil at the Lehigh Electric site were screened, and their implementability determined. The options considered included:

- Site Management
- Site Capping
- On-Site Waste Stabilization (Chemical Destruction)
- Waste Excavation with Off-Site Disposal
- On-Site Encapsulation
- On-Site Waste Incineration
- On-Site Biodegradation of Waste

Several factors used in screening the options were:

- Technical Feasibility
- Cost Effectiveness
- Environmental Effectiveness
- Implementation Time Frame

As a result of the screening process, the following options were excluded from being evaluated further (alone or in combination with other options) in the feasibility study:

Site Capping Only - Due to the high concentrations of PCBs in the soil (up to 110,000 ppm), the estimated quantity of PCBs on-site (27.5 tons), and the incidence of mine subsidence in the area, the long-term integrity of a cap system is questionable. Therfore, it was determined that site capping alone is not an adequate remedial measure to protect public health.

On-Site Waste Stabilization - Chemical destruction of PCB-contaminated soil is in the experimental stages and is unproven technology.

On-Site Waste Incineration - There are no mobile incinerators permitted to operate in Pennsylvania. Operating costs would also be excessive making this option not cost-effective.

On-Site Biodegradation of Waste - Although this method has been shown to be effective for some types of hazardous waste, it is not a proven technology for use with PCB contamination at this time.

The remaining remedial options were evaluated in detail (alone or in combination) in the feasibility study and were used to formulate alternative site clean-up strategies. The feasibility study published by Weston (Attachment B) identifies alternatives for remedial action at the Lehigh Electric Site. These alternatives and their associated costs are presented below:

| Alternative | Estimated Capital Cost |
|---|---|
| 1. No Action | $10,000 |
| 2. Removal to 10 ppm & Site Management | $7,546,000 |
| 3. Removal to 10 ppm & Site Capping | $7,725,000 |
| 4. Removal to 50 ppm & Site Management | $6,140,000 |
| 5. Removal to 50 ppm & Site Capping | $6,284,000 |
| 6. Removal to 50 ppm & Encapsulation of 10 to 50 ppm On-Site | $6,448,000 |
| * 7. Removal to 50 ppm with additional excavation where cost-effective and site management (Number 4 Modified) | $6,401,000 |

(O&M costs range from $34K to $54K for all options except "No Action", which is $135,000.)

Each alternative except "No Action" required as a minimum the removal from the site of all soil with PCB concentration of 50 ppm or greater. Further, based on the results of a preliminary endangerment assessment, it is determined that the "No Action" option results in upper limits of excess cancer risk and measures of reproductive risks which are in the ranges that generally cause concern. As a result, we have determined that the "No Action" option is not acceptable.

## Public Input

On January 10, 1983, a public meeting and a press briefing were conducted in Old Forge, Pennsylvania to describe the various alternatives (the alternatives 1-6 above) and to discuss the Phase II portion of the site clean-up. During the public comment period which followed the meeting, we received letters and petitions from the community demanding that we implement the alternative calling for removal to 10 ppm with capping at an estimated cost of $7,725,000. They insisted that the lower the concentration level of PCBs remaining on site, the lower the risk to the community will be in future years [see Attachment C].

---

* Alternative 7 was added to the feasibility study after the public comment period, and in response to the public comments.

We believe that implementation of alternative 3 would not be cost-effective. However, as a result of public comments, we devised a modification to alternative 4 (Alternative 7, above) which would reduce the concentration levels of PCBs remaining on site to substantially below 50 ppm for a fraction of the cost difference between alternatives 3 and 4. The modification includes additional soil excavation below the 50 ppm concentration level when it is determined to be cost-effective.

On January 31st we met with citizen leaders of the community (the PCB Committee) to discuss this modified alternative. They reacted positively, and we believe that their concerns will be satisfied if this cost-effective method for site clean-up is implemented.

## Recommended Alternative

Section 300.68(j) of the National Contingency Plan (NCP) [47FR 31180, July 16, 1982] states that the appropriate extent of remedy shall be determined by the lead agency's selection of the remedial alternative which the agency determines is cost-effective (i.e., the lowest cost alternative that is technologically feasible and reliable) and which effectively mitigates and minimizes damage to and provides adequate protection of public health, welfare, or the environment. Based on our evaluation of the cost-effectiveness of each of the proposed alternatives, the comments received from the public, information from the Site Investigation and Feasibility Study Reports, and information from the State, we developed Alternative 7 above. This alternative includes: excavation and off-site disposal of soils with a PCB concentration of 50 ppm or greater; additional soil excavation and removal where cost-effective (i.e., substantial PCB removal for small incremental cost increase); demolition of the buildings on-site; backfilling, grading, and vegetating of the site to minimize erosion and to control percolation and run-off. We have determined that implementation of this alternative will effectively mitigate damage to and provide adequate protection of public health, welfare, and the environment.

The methodology for determining whether additonal soil excavation is cost-effective involves subdivision of certain grids (based upon data from the Site Investigation Report) once removal to 50 ppm has been achieved. Soil samples will be collected in the subgrids and analyzed for PCB concentration. The Government's on-site representative (i.e. Corps of Engineers Inspector) will evaluate the results and decide whether or not a significant amount of PCB-contaminated soil could be removed from the site with little additional excavation and cost.

The capital cost for this alternative is estimated to be $6,401,000. The monitoring and maintenance costs are estimated to be $46,000 (present worth value) for a period of thirty years. A breakdown of the capital costs appear in Attachment E.

## State Input

After giving careful consideration to the cost-effectiveness of each alternative and evaluating the public comments EPA had received, the Pennsylvania Department of Environmental Resources recommended that we implement an alternative (now designated as Alternative 7) calling for removal of soil with PCB concentrations of 50 ppm or greater with additional cost-effective excavation and site management. A letter confirming the State's decision appears as Attachment D.

## Proposed Action

We request your approval of the removal to 50 ppm with additional cost-effective excavation and site management as the remedial implementation option for the Phase II Lehigh Electric Site clean-up. In addition, we request an allocation of $6,401,000 for the project. An allocation of $300,000 for the preparation of the plans and specifications for the clean-up has already been made.

## Tentative Schedule

| | |
|---|---|
| Initiate Design | February 1983 |
| Complete Design | May 1983 |
| Initiate Clean-up | August 1983 |
| Complete Clean-up | December 1983 |

If you have any questions, please call Anthony S. Bartolomeo at (FTS)597-9100.

Attachments

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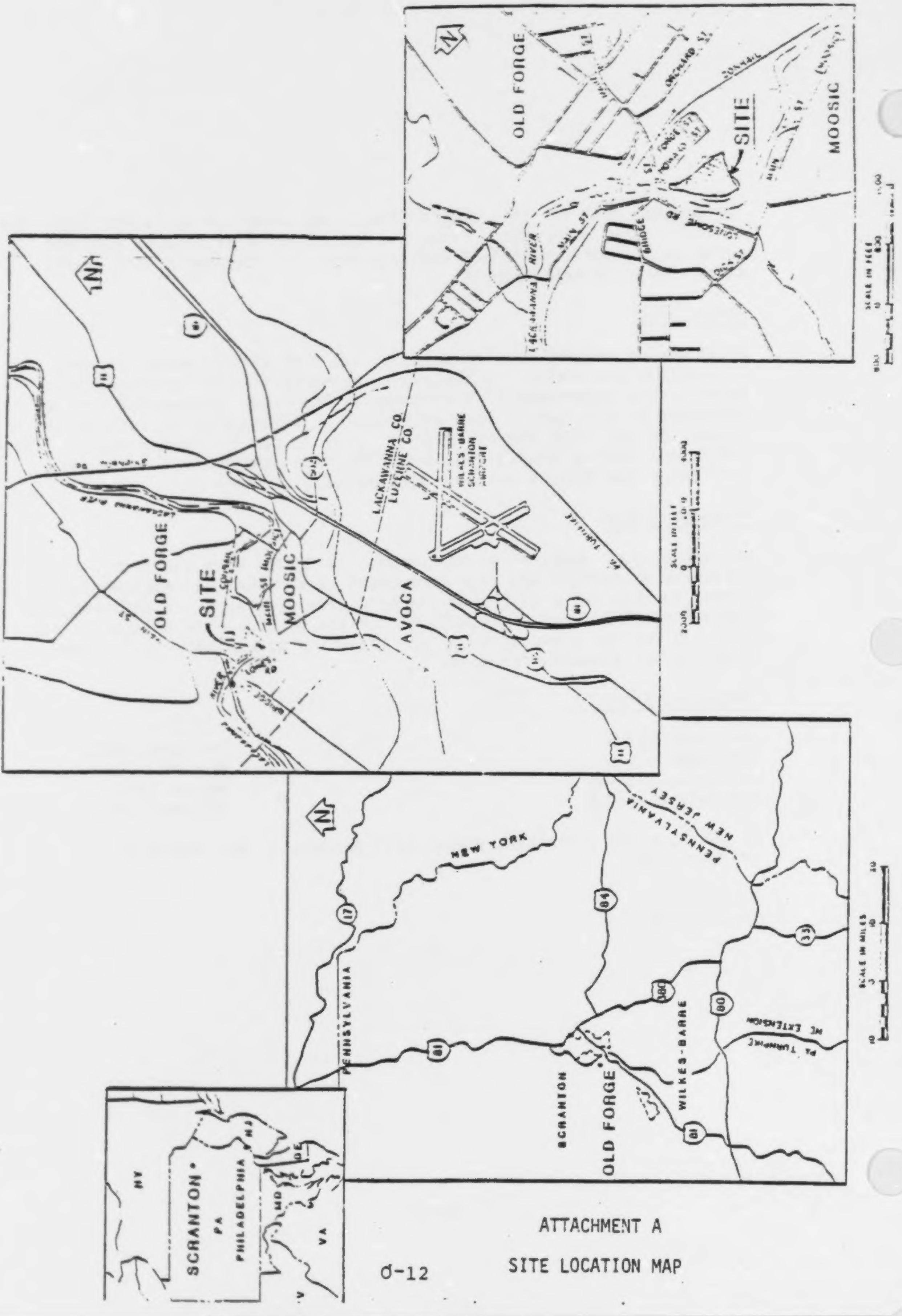
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ATTACHMENT A

SITE LOCATION MAP

# ATTACHMENT B

## Feasibility Study

In the interest of brevity, Attachment B has been deleted from this appendix.

# PUBLIC COMMENTS

During the public comment period of the Feasibility Study Report, letters were received by EPA from the Mayor and Councilmen of the Borough of Old Forge and the Old Forge PCB Committee. A petition was also received with approximately two hundred signatures of residents from the Borough of Old Forge.

Basically, all correspondence addresses the level of PCB concentrations in the soil which will be left on-site. The alternatives evaluated in the Feasibility Study were based upon soil with PCB concentrations of fifty parts per million and ten parts per million. The community insists that the clean-up alternative selected be one which calls for the removal from the site of all soils with a PCB concentration of ten parts per million or greater.

The alternative that the Region is recommending is for removal of soils from the site based on a fifty parts per million or greater PCB concentration, and additional excavation and removal where it is determined to be cost-effective.

On Monday, January 31st, a meeting with the Old Forge PCB Committee was conducted to explain alternative 4 (modified). Based upon their positive reaction, we believe that this alternative, if chosen to be implemented, will be acceptable to the PCB Committee and the community.

Copies of the correspondence are included in this attachment.

(Correspondence has been deleted because of limited space.)

ATTACHMENT C

# ATTACHMENT D

State Recommendation

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
Post Office Box 2063
Harrisburg, Pennsylvania 17120

February 2, 1983

(717) 787-9871

Mr. Anthony S. Bartolomeo
U.S. Environmental Protection Agency
Region III
Sixth and Walnut Streets
Philadelphia, PA 19106

Dear Mr. Bartolomeo:

The Department of Environmental Resources, Bureau of Solid Waste Mangement has completed its evaluation of the Phase II remedial action alternative for the Lehigh Electric site contained in the November, 1982 Remedial Feasibility Report prepared by Roy F. Weston, Consulting Engineers.

It is our opinion, based upon the documentation contained in the Feasibility Report and the additional data provided to DER by EPA on January 31, 1983, that the most applicable remedial clean-up option for this site is a modification of alternative 4. The Bureau believes that the environmental effectiveness and technical feasibility of this modified alternative, coupled with the long-term operation and maintenance responsibilities of the Commonwealth provide a reliable, practical and implementable solution for the site.

The removal of the transformers, electrical equipment, and miscellaneous wood and debris during the first phase of this project disturbed surface soils and the original grid stakes. Because of this fact and the need to ensure that the implementation of this clean-up alternative removes the PCB contaminated soils to a level of 50 ppm or less, we believe alternative 4 should be modified to include the removal of a minimum of 6" of soil from the entire property (The Hot Area) currently bounded by the fence. Moreover, consideration should be given to the removal of extra contaminated soils where it is cost effective, i.e., beyond the depths specified in alternative 4 and the supporting documentation.

A quality assurance program approved by DER and EPA must be developed and utilized by the selected clean-up contractor at this site to insure that the clean-up objective is met. In light of the physical location of this site, the issues of flooding and mine subsidence must be specifically addressed in the design to be approved by our agencies to ensure that the integrity of the alternative finally selected is not compromised.

It should be further understood that once an alternative for the clean-up of this site is finally selected by our respective agencies, the nature and extent of operation and maintenance activities will be jointly agreed upon by DER and EPA for this site.

If you have any questions or comments on the recommended alternative or other remarks contained in this correspondence, please do not hesitate to contact me.

Sincerely,

James P Snyder

JAMES P. SNYDER, Assistant Director
Bureau of Solid Waste Management

Cost Estimate -- Alternative 4 (Modified)

ATTACHMENT E

## Capital Cost of the Recommended Alternative

| | Description | Quantity | Unit Cost | Total Cost |
|---|---|---|---|---|
| 1. | Regulated soil for secure disposal [1] | 19,300 tons<br>(13,000 C.Y.) | $ 170/ton | $ 3,281,000 |
| 2. | Low level soil for off-site disposal[2] | 600 tons<br>(400 C.Y.) | $ 170/ton | $170,000 |
| 3. | Low level soil for on-property burial | 1,500 tons<br>( 1,000 C.Y.) | $ 6/ton | 9,000 |
| 4. | Trace soil for on-property burial | 2,100 tons<br>( 1,400 C.Y.) | $ 6/ton | 12,600 |
| 5. | Additional soil for off-site disposal | 1,800 tons<br>( 1,200 C.Y.) | $ 170/ton | 306,000 |
| 6. | Wastewater | 920,000 gal. | $ 0.15/gal. | 138,000 |
| 7. | Structure demolition and placement of rubble and gravel[3] | L.S. | | 70,000 |
| 8. | Secure Disposal/ decontamination of Miscellaneous Concrete pads | 72 tons | $ 208/ton | 15,000 |
| 9. | Clean backfill | 11,800 C.Y. | $ 12/C.Y. | 161,400 |
| 10. | Off-site disposal of wood/ roofing/steel | L.S. | | 6,000 |
| 11. | Cleaning, drain hole installation and sealing concrete surfaces | L.S. | | 29,500 |
| 12. | Site capping area | 0 | | |
| 13. | Encapsulation control area | 0 | | |
| 14. | Additional excavation/ placement and compaction of fill required for encapsulation area | 0 | | |
| 15. | Topsoil/seeding/erosion control | 23,000 S.Y. | $ 2.50/S.Y. | 57,500 |
| 16. | Drainage swale | L.S. | | 7,400 |
| 17. | Fencing | L.S. | | 18,200 |
| 18. | Flood controls | L.S. | | 12,000 |
| 19. | Clearing | L.S. | | 10,000 |
| 20. | On-site lab mobilization and demobilization | L.S. | | 12,000 |
| 21. | Soil testing | 270 samples | $ 50 /sample | 13,500 |
| 22. | Monitoring well new construction/backfilling of existing not required wells | 6 wells (backfilled) | $ 250 /well | 1,500 |
| 23. | Soil cover for foundations of Buildings 1 and 3 (includes flow zone)[5] | | | 30,000 |
| | Subtotal | | | $ 4,360,300 |
| | Mobilization, demobilization, and site services (22%) | | | 595,4000 |
| | Subtotal | | | $ 5,320,200 |
| | Insurance, bonds, permits (2%) | | | 106,000 |
| | Overhead and profit (10%)[4] | | | 156,000 |
| | Subtotal | | | $ 5,582,200 |
| | Contingency (15%) | | | 813,300 |
| | Total | | | $ 6,401,000 |

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1. If an incineration facility is used for disposal of regulated soils, the following cost estimate revisions apply: Item 1 Unit Cost = $ 1,470/ton
Item 1 Total Cost = $28,300,000

2. If a solid waste landfill is designated for disposal of low level soils, the following cost estimate revisions apply: Item 2 Unit Cost = $ 30/ton
Item 2 Total Cost = $ 18,000

3. Includes filling two on-site tunnels.

4. Not applied to disposal costs for soils (Items 1, 2 and 5).

5. See Appendix for details

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# APPENDIX P

## SELECTED EPA POLICY PAPERS

### PURPOSE

This appendix has been included to provide additional background information on EPA policies related to Superfund remedial activities. Copies of ten EPA policy papers have been provided.

### APPENDIX SUMMARY

This appendix contains the following documents:

- "Waiver of 10 Percent Cost-Share for Remedial Planning Activities at Privately-Owned Sites," OSWER, May 13, 1983
- "Guidance on Implementing Waiver of 10 Percent Cost-Share for Remedial Planning," OERR, June 1, 1983
- "Class Deviation from 40 CFR 30.720(a)," GAD, May 12, 1983
- "Policy on Cost-Sharing at Publicly-Owned Sites," OSWER, March 30, 1983
- "Payment of State Enforcement Costs under Superfund," OERR and OWPE, December 15, 1982 (approved by OSWER January 21, 1983)
- "Treatment of State Recoveries from Responsible Parties," OERR, December 15, 1982
- "Guidance for State Contracting of Remedial Planning Activities," OERR, February 22, 1983
- "Class Deviation from 40 CFR 33.510 and 33.515 for Certain Activities Conducted under the Authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980," GAD, November 18, 1983
- "Requirements for Selecting an Off-Site Option in a Superfund Response Action," OERR, February 28, 1983
- "Superfund Community Relations Policy," OSWER, May 1983.

Copies of these documents have been included herein for the benefit of State and EPA remedial personnel. Other documents referenced throughout the text may be secured, as necessary, from the EPA Regional program or Headquarters Superfund offices.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 13 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Waiver of 10 Percent Cost-Share for Remedial Planning Activities at Privately-Owned Sites

FROM: Lee M. Thomas
Acting Assistant Administrator

TO: Regional Administrators
Regional Superfund Coordinators

On March 11,1982, cost-sharing was imposed on remedial planning activities (investigation, feasibility study and design) at privately owned sites. This requirement was adopted to ensure early State involvement in remedial actions. Requiring cost-sharing for planning provides a mechanism for EPA to encourage States to become more involved in the planning of a project.

Our experience has shown, however, that the current policy contributes substantially to program delays and to State financing problems. We have found that the policy provides only negligible benefits in terms of Fund conservation since planning costs are generally a small component of toal response costs.

Therefore, I am directing a reversal of current policy to allow the funding of remedial investigation, feasibilitystudy, and remedial design at privately-owned sites without a State cost-share.

Implementation:

Any cost-shares previously paid by the State (allowable State services, statutory credit or cash) for remedial investigations, feasibility studies, and remedial design at privately-owned sites will be applied toward the State's share of the cost for remedial construction at that site. Additional guidance on implementing this policy will be forthcoming.

This policy is effective immediately.

If you have any questions on this policy, please contact Doug Cohen of my staff at FTS 382-2206.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 1 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Guidance on Implementing Waiver of 10 Percent Cost-Share for Remedial Planning

FROM: William N. Hedeman, Jr., Director Bill Hedeman
Office of Emergency and Remedial Response (WH-548)

TO: Regional Administrators
Regional Superfund Coordinators

On May 13, 1983, Lee Thomas, Acting Assistant Administrator for Solid Waste and Emergency Response, obtained a class deviation from 40 CFR 30.720(a) permitting the waiver of cost-sharing requirements for remedial planning activities (remedial investigation, feasibility study, and remedial design) at privately-owned sites [Attachment 1].

This memo establishes procedures for implementing the May 13, 1983, policy.

(1) Cooperative Agreements

(a) Active Cooperative Agreements: Cooperative agreements that were signed by the EPA award official prior to May 13, 1983.

For those active cooperative agreements, where the State was required to cost-share (State services, cash or statutory credit) for remedial planning activities at privately-owned sites, allowable State cost-shares will be applied toward the State's share of the costs for remedial action ("construction") at that site. Allowable State cost-shares which have been incurred or will be incurred under the agreement may be applied to future remedial action at that particular site.

This cost-sharing arrangement maybe accomplished through a cooperative agreement amendment request made by the State to the Region. The Region will forward this amendment request to the appropriate zone manager in the Hazardous Site Control Division (HSCD). EPA will then send the State a formal amendment.

If the State has not yet paid its remedial planning cost-share and does not want to contribute any share during planning, the State must request a cooperative agreement amendment and submit revised budget to the Region indicating that Federal funds will pay 100 percent of remedial planning costs. The Region should forward this amendment and budget to the appropriate zone manager in HSCD. EPA will send the State a formal amendment containing a special condition pertaining to the change in cost-sharing and the additional EPA funds to support the cost-share change.

For those agreements where the State has made partial payment of its cost-share, the State has the option of continuing to pay its share and apply it towards construction or submitting a revised budget to reflect 100 percent Federal funding for those parts of the project remaining after June 15, 1983. In both situations, the State must request an amendment to the agreement.

All cost-shares paid by the State may be applied to future construction at that site.

(b) Cooperative Agreement applications received in final by EPA prior to June 15, 1983.

Applications received by EPA prior to June 15, 1983, need not be returned to the State; however, the Region should contact the State regarding 100 percent Federal funding. Based on the State's choice, the cooperative agreement will either reflect 100 percent funding or reflect the State's desired contribution to the remedial planning activities. If the State desires to contribute during these activities, EPA will permit allowable State contributions to be used towards the State cost-sharing responsibilities for future remedial action at the site. This will be stated in a special condition to the cooperative agreement.

(c) Cooperative Agreement applications received in final by EPA after June 15, 1983.

Any final applications received by EPA after June 15, 1983, should reflect 100 percent Federal funding for remedial planning activities.

For those agreements where the State was required to cost-share for remedial planning activities[1] and those cooperative agreement applications

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[1] Information in HSCD indicates that these are the active cooperative agreements affected by this policy. Should Regions/States believe that other cooperative agreements are impacted, please contact the appropriate zone manager in HSCD.

| | |
|---|---|
| Region I | Keefe, N.H. |
| Region II | Spence Farm, NJ; Goose Farm, NJ; Friedman, NJ; Pijak, NJ and Syncon Resins, NJ; Love Canal, NY |
| Region V | Berlin and Farro, MI; LDI, MI; Byron Salvage, IL; Cross Brothers, IL; Reilly Tar, MN |
| Region VI | Old Inger, LA; Highland Acid, TX; Harris, TX; Crystal Chemical, TX |
| Region VIII | Central City, CO; Woodbury, CO; Arsenic Trioxide, ND |
| Region X | Commencement Bay, WA |

submitted to EPA prior to June 15, 1983, the Regions must determine, as soon as possible; what the States' decision is on cost-sharing .

(2) Superfund State Contracts (SSCs)

All existing SSCs where the State is required to cost-share for remedial planning[2] must be amended to reflect 100 percent Federal funding. The State may elect under existing SSCs; however, to contribute to the remedial planning activities and apply any allowable contribution to remedial construction at that site.

Since cost-sharing has been eliminated, future Federal lead projects for remedial planning activities will not need an SSC. We require, however, that the State request EPA action at the site and approve the scope of work. This should be accomplished by a letter from the State to the Region.

Because Initial Remedial Measures (IRMs) are considered part of the "remedial action" phase at a site, cost-sharing will be required and an SSC must be prepared.

Attachment

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[2] Information in HSCD indicates that these are the active SSCs affected by this policy. Should Regions/States believe that other SSCs are impacted, please contact the appropriate zone manager in HSCD.

Nyanza, MA; Lipari, NJ; Kin-Buc, NJ; Lone Pine, NJ; D'Imperio, NJ; Krysowaty, NJ; Bridgeport, NJ; Price Landfill, NJ; Drake, PA; Tybouts, DE; Enviro-Chem, IN; OMC, IL; Minker-Stout, MO and Globe, AZ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 12 1983

OFFICE OF
ADMINISTRATION

MEMORANDUM

TO: William N. Hedeman, Jr., Director
Office of Emergency and Remedial Response (WH-548)

FROM: Harvey Pippen, Jr., Director
Grants Administration Division (PM-216)

SUBJECT: Class Deviation from 40 CFR 30.720(a)

This responds to your April 1. 1983. request for a class deviation from 40 CFR 30.720(a) of the general grant regulations for remedial planning activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).

Section 30.720(a) requires EPA assistance recipients to share project costs; at a minimum, recipients must contribute five percent of allowable project costs. In addition, your March 11, 1982, memorandum to Regional Administrators and Regional Superfund ~~Coordinators~~ stated that "... States are now required to pay 10 percent of remedial planning ...." This action implemented a policy decision made by EPA Administrator Anne Gorsuch. On May 11, 1983, I received a memorandum from Acting Deputy Administrator Lee M. Thomas reversing the previous policy of requiring cost-sharing for Superfund remedial planning actions.

EPA believes there are several reasons for not requiring grantees to share the cost of this program. First, States maintain that the cost-sharing requirement is an unrealistic financial burden which, given their limited resources, reduces the number of sites at which they are able to take action. In addition, since many States do not have existing response funds, remedial planning activities often are delayed while the State legislature appropriates funds on a site specific basis. Many of these sites contain a variety of carcinogenic, mutagenic, and other toxic chemicals. Thus, imposing a cost-share delays EPA response actions to threats to public health and the environment.

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Therefore, I am approving a class deviation from 40 CFR 30.720(a) for remedial planning activities under CERCLA. This deviation waives the cost-sharing requirement in EPA's general grant regulation (40 CFR 30) for this program.

Concur: ______________________ Date: 5/12/83
Alfred M. Zuck
Acting Assistant Administrator
for Administration (PM-208)

Concur: ______________________ Date: 5/12/83
Lee M. Thomas
Acting Assistant Administrator
for Solid Waste and
Emergency Response (WH-562A)

cc: Official DEV 30.720(a)
Reading
Division
A. Zuck (208)
L. Thomas (WH-562A)
C. Mahan (PM-224)
J. Gwynn
M. Schy

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 30 1983

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Policy on Cost-Sharing at Publicly-Owned Sites

FROM: William N. Hedeman, Jr., Director Bill Hedeman
Office of Emergency and Remedial Response (WH-548)

TO: Regional Superfund Coordinators
Regions I-X

Background:

Section 104(c)(3)(C)(ii) of CERCLA (The Comprehensive Environmental Response, Compensation and Liability Act of 1980), requires States to pay 50 percent or more of the response costs associated with facilities owned by States or their political subdivisions ("publicly-owned") at the time of disposal of any hazardous substances.

Policy:

The following is EPA policy on section 104(c)(3):

1. States are required to pay 50 percent or more of response costs for publicly-owned facilities.

OERR's general policy is to require only a 50 percent cost-share at these facilities. If the Regional Administrator (RA) believes that a State should pay greater than a 50 percent share, based upon the degree of responsibility of the State or its political subdivision, the RA should indicate the suggested share and justification for it. This recommendation should be included as an attachment to the Action Memo package the Region submits to Headquarters.

2. The cost-share for facilities which become publicly-owned after "active" disposal ceased is 10 percent.

The language of 104(c)(3) indicates that the State share is 50 percent of all response costs if the State or one of its subdivisions owned the facility "at the time of disposal." Where a State or local government acquires a site after hazardous substance disposal at the site has ceased, a 10 percent cost-share is appropriate. Often States took possession in order to provide security, mitigate an emergency, accomplish a response action or act as a receiver in a bankruptcy proceeding. Imposition of a 50 percent cost-share would discourage States from taking possession of a facility in these and similar circumstances and would make it more difficult for States to meet their cost-share.

Therefore, the State is required to pay 10 percent of remedial costs at facilities which became publicly-owned after active disposal has ceased.

I realize that some site actions have been delayed pending resolution of this issue. Please implement this policy as soon as possible to alleviate any further delay.

If you have any questions on our State cost sharing policy, contact Doug Cohen of my staff at FTS 382-2206.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 15 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

SFEG-83-2

MEMORANDUM

SUBJECT: Payment of State Enforcement Costs under Superfund

FROM: William N. Hedeman, Jr., Director Bill Hedeman
Office of Emergency and Remedial Response (WH-548)

Gene Lucero, Acting Director Gene Lucero
Office of Waste Programs Enforcement (WH-527)

TO: Rita M. Lavelle
Assistant Administrator (WH-562)

## ISSUE:

CERCLA authorizes but does not require the Fund to pay for State enforcement costs incurred pursuant to a cooperative agreement. In addition, before EPA can fund remedial actions, CERCLA requires States to make assurances that they will pay for their share of the costs of the remedial action. Enforcement costs incurred by the State during the section 104(c)(3) "credit period" might be counted toward this cost share. This memo addresses the following issue: What enforcement costs, if any, should be allowable under the Fund?

## BACKGROUND:

Section 104 of CERCLA authorizes Federal or State response to releases or substantial threats of releases of hazardous substances or, under certain circumstances, of pollutants or contaminants. Section 104(b) of the Act authorizes a broad range of studies and investigations, including:

> "...such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he [the President] may deem necessary or appropriate to plan and direct response actions, to recover costs thereof, and to enforce the provisions of the Act."

Section 111(a) of the Act makes such activities eligible for payment from the Fund. In addition, section 111(c)(3) allows the Fund to pay for the costs of a program to identify, investigate and take enforcement and abatement action against releases of hazardous substances. The language of section 111(c)(3) is more general than that contained in section 104(b). It can be interpreted to authorize not only investigations and studies, but also development of evidence, legal fees, expert testimony and court costs. EPA's Office of General Counsel has advised, that:

> "...the statute contemplates State enforcement action and permits the use of the Trust Fund to pay the cost of such actions, but does not require such payment.[1]

The question, therefore, is whether EPA should allow (1) the Fund to pay for any enforcement costs to be incurred prospectively by the State under future cooperative agreements and (2) enforcement costs incurred by the States between January 1, 1978 and December 11, 1980, to be counted toward the States' cost share for future response actions. EPA can exercise considerable control over future enforcement activities supported by the Fund by defining such activities with some specificity in the cooperative agreements. Such control cannot, obviously, be exercised over actions completed and costs incurred during the "credit period." The options outlined below address both aspects of the issue -- future activities and already completed activities.

The primary obstacle to a policy that would preclude payment of State enforcement costs is that many of these costs are difficult to distinguish from costs incurred in the course of gathering information for Fund-financed cleanup. Activities involving the investigation of sites and the gathering of evidence might be necessary for both Fund-financed cleanup and enforcement actions. It may not be possible to definitely attribute these costs to either enforcement or cleanup, even after the State settles on one approach.

OPTIONS:

1. Allow all State enforcement costs for sites that are on the National Priorities List (NPL)
2. Allow State enforcement costs related to discovery, investigation, and development of evidence for sites on the NPL, but exclude costs strictly related to the State's legal operations.
3. Exclude all State enforcement costs.

Option 1:

In future cooperative agreements, provide for site-specific State enforcement costs for sites that are on the NPL and allow both direct and indirect[2] costs for such defined actions. However, allow only direct enforcement costs, and not indirect costs, incurred by the States for the period from January 1, 1978, to December 11, 1980, to be counted toward the States' costs share for response actions at such sites.

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[1] Memorandum from Gerald Yamada, Acting Associate General Counsel, to William Sullivan, Deputy Associate Administrator for Enforcement Policy "Superfund Cost Issues" (September 22, 1981)

[2] Direct costs would include those directly and wholly attributable to the project; indirect costs, on the other hand, would include xeroxing, heating, lighting, telephones, second line supervisors, etc.

Advantages:

- May encourage more responsible party cleanups, with less cost to the Fund, because additional responsible parties would be identified through State enforcement actions.
- May reduce the workload for Federal enforcement.
- By allowing the States to count already incurred costs against their required "match", it will be it easier for States to meet their cost-share requirements, and, therefore, facilitate response action at more sites.
- This approach is consistent with the objective of the strategy "to enhance State capability."
- Easy to administer

Disadvantages:

- This approach increases demands on the Fund.

Option 2:

Identify in guidance the particular types of enforcement costs that are allowable. Allow enforcement costs attributable to site-specific activities, that are difficult to distinguish from response action costs in general. This would include discovery, investigation, gathering of evidence, preparation of expert witness testimony and legal advice associated with those activities . Disallow costs specifically attributable to litigation and to overall State enforcement program management. Costs that would not be allowable include court costs and legal fees. Allowable and non-allowable cost are described in more detail in the attachment.

Advantages:

- This approach facilitates State management of a coordinated enforcement/response action approach, because enforcement costs which are difficult to distinguish from other response action costs are not disallowed merely because they may ultimately result in an enforcement action, rather than Fund-financed response action.
- The demand on the Fund would be curtailed to a certain extent as States would not receive support from the Fund for activities that are strictly related to litigation.

- Like Option 1, this approach may reduce the workload for Federal enforcement and, because certain past costs could be counted toward the States' match, make it easier for States to meet their cost-shares.
- This approach also would be consistent with the strategy objective to enhance State capability.

Disadvantages:

- This option may not necessarily provide substantial savings to Fund expenditures over Option 1, because many expensive enforcement costs are likely to be allowable.
- While it should be possible to distinquish between pre and post-litigation costs for activities that occurred during the credit period, there may still be problems distinquishing between allowable and non-allowable costs.

Option 3:

Disallow all State enforcement costs.

Advantages:

- This approach would avoid expenditures from the Fund for this purpose.

Disadvantages:

- This approach would be difficult to administer, because certain activities such as discovery and investigation might be considered either enforcement or remedial action.
- This approach would not be consistent with the strategy "to enhance State capability."
- States would have to commit themselves to a particular course of action at a very early stage to make efficient use of their funds, thereby eliminating flexibility available to the States under the present system.

RECOMMENDATION:

The Agency should adopt Option 2, allowing specifically identified, site-specific enforcement costs related to investigation and development of evidence that are difficult to distinguish from other cleanup related costs, to be included as prospective costs in future cooperative agreements and to be counted toward the State's cost share if incurred during the credit period. Costs associated with the public function of law enforcement, such as court costs and payment of attorneys would not be allowable.

Concur: Rita M. Lavelle
Rita M. Lavelle

Non-Concur
Rita M. Lavelle

Attachment

JAN 21 1983

# ENFORCEMENT COSTS UNDER SUPERFUND

A. Allowable Cost

1. Investigation costs, including identification of responsible parties
2. Development of evidence
    - o Aerial photography
    - o Sampling and analysis (ground water, surface water, air)
    - o Expert testimony
        - - Medical
        - - Technical
    - o Notice letter
3. Indirect costs associated with items A. 1-2

B. Non-Allowable Cost

1. Legal Fees
    - o Legal research in support of litigation
    - o Court time
    - o Preparation of briefs, etc.
2. Court costs (filing fees, etc.)
3. Indirect costs associated with items B. 1-2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 15 1982

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE
SFEG-83-1

MEMORANDUM

SUBJECT: Treatment of State Recoveries from Responsible Parties

FROM: William N. Hedeman, Jr., Director Bill Hedeman
Office of Emergency and Remedial Response (WH-548)

TO: Superfund Coordinators
Regions I-X

## BACKGROUND:

I have received inquiries from several Regions regarding the treatment of monies and services recovered from responsible parties at Superfund sites prior to Federal involvement at that site. Two types of recoveries from responsible parties are involved: (1) State induced private party cleanup (i.e. the situations in which a responsible party agrees to cleanup as a result of State enforcement efforts); and (2) recovery of cash from responsible parties.

This memo will address our policy on Superfund treatment of these types of recoveries. It does not affect efforts by either the State or EPA to recover any enforcement costs in current or future enforcement actions.

## DISCUSSION:

### (1) State Induced Private Party Cleanup

Some States have proposed that they be permitted to apply the cost of a responsible party cleanup to the State's cost-share, since the States, through administrative or judicial proceedings, caused the cleanup to be undertaken.

CERCLA contemplates two types of action: Fund-financed response and private party cleanup. The Fund-financed response must be taken in accordance with EPA policies and regulations. Where the State has induced private party action, there is no prior EPA approval of the project to assure that the project conforms to Fund-financed guidelines. It would be difficult and resource intensive to ascertain which components of the project met Fund-financed requirements.

Further, Section 104(a)(1) authorizes a Fund-financed response if the response will not be done properly by a responsible party. The Fund is available to finance response activities that remain to be done at the site, after taking into account the work done by a responsible party. Therefore, EPA will not allow a State to apply the value of State induced actions taken by responsible parties toward the State's cost-share.

(2) Cash Recovery

In order for a site to qualify for Superfund financing, a State that recovers money from a responsible party must apply the recovery to the cost of the remedial action. In those cases where the State has recovered monies from the responsible party prior to February 1, 1983, the State may first deduct from the recovery its reasonable enforcement costs as allowed under EPA's Superfund enforcement costs policy (attached). In all recoveries after that date, the State may deduct reasonable enforcement costs only when the settlement specifically provides that the recovered amount includes payment to the State of these previously incurred costs.

After the recovery is deducted from the overall cost of the remedial action, the balance of the cost of remedial action (if any) will be eligible for Fund-financing on a 90/10 basis (unless the State is required to pay at least 50 percent of the remedial action due to ownership at the time of disposal).

Should you have any questions on this policy or its implementation, please contact Doug Cohen on FTS 382-2206.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 2 [illegible]

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

**MEMORANDUM**

SUBJECT: Guidance for State Contracting of Remedial Planning Activities

FROM: William N. Hedeman, Jr., Director Bill Hedeman
Office of Emergency and Remedial Response (WH-548)

TO: Superfund Coordinators
Region I - X

## PURPOSE:

This memorandum provides guidance to Regional personnel on State contracting for remedial planning activities under cooperative agreements. The procedures recommended here should minimize the time needed for procurement of these services and improve the efficiency of conducting remedial planning projects. Specifically, the delay between cooperative agreement award and the start of projects can be significantly reduced. Secondly, the time between completion of the feasibility study and the start of design should be held to a minimum.

## BACKGROUND:

The remedial planning process is divided into two major fundable activities: remedial investigation/feasibility study (RI/FS) and engineering design/construction oversight. The RI/FS phase leads to the recommendation of a cost-effective remedial action. The action is recommended jointly by the State and EPA Region following their review and approval of the feasibility study. The remedy is then reviewed and either approved or denied by the Assistant Administrator for Solid Waste and Emergency Response.*

The National Contingency Plan (NCP) states that funding for remedial response actions should be provided in two phases. The remedial investigation and feasibility study will be funded first. After a remedial action is approved, the design and construction will be funded. (Note: This two-phased funding applies to source control and off-site remedial measures. Funding for initial remedial measures may be provided for all planning and construction activities in one agreement.)

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* Responsibility for approval or denial of initial remedial measures is held by the Regional Administrator.

Separate procurement actions are needed when States choose different firms for the RI/FS and engineering design/construction oversight. Additional time is required for the second procurement process and, if not done concurrently with completion of the previous activity (i.e. RI/FS), procurement of technical services will contribute to a delay in the entire remedial action process.

Our current assessment is that procurement of engineering services for RI/FS activities now exceeds four months at most sites. At several sites almost one year has elapsed between cooperative agreement award and project start. Use of separate contracts, with the possibility that different firms will be selected for each activity compounds the time required for procurement and may contribute to inefficient implementation of these projects. The remedial planning activities are actually phases of a continuous planning process with each subsequent activity building on the previous one. Whenever possible, combining these activities into a single contract will save time and should improve the efficiency of remedial responses.

## IMPLEMENTATION:

Four alternate methods are described below to expedite implementation of State remedial planning activities. These are offered as guidance to be applied on a case-by-case basis taking into account State capabilities and specific site conditions. States should be encouraged to use one or more of these methods as appropriate.

### Options Contract for Site Planning

States may include the RI/FS, engineering design, and construction oversight in the scope of work for the initial site cooperative agreement. Following completion of the RI/FS activity and approval of the remedy, engineering design and construction oversight would be funded through an amendment to the cooperative agreement. Consequently, in order to minimize delays, the State's request for proposal (or similar document) can be developed to include the RI/FS and the engineering design/construction oversight. In this case, the request for proposal must indicate that the RI/FS is the initial activity that will be authorized and that an option for design and construction oversight may be executed through a separate notice to proceed, subject to availability of funding and negotiation of an acceptable cost. The scope of work must be described in sufficient detail to allow preparation of an acceptable proposal covering both the initial and optional activities. The State would have the option of using the same contractor if the design and construction projects are funded and the scope is within the area of the firm's expertise. This approach for preparation of cooperative agreements and requests for proposals should result in improved continuity in technical activities, accelerated project schedules, and reduced State administrative costs associated with procurement of technical services.

This approach, however, may not be applicable for complex sites where a wide range of alternatives are possible. For example, if both relocation and on-site waste treatment are viable options, the scope of work covering design and construction oversight may be difficult to prepare prior to completion of the feasibility study. In this situation, a separate procurement action for the second phase would be needed. This approach is also inappropriate when a conflict of interest exists as described below.

## Pre-Award Procurement

States should seriously consider starting procurement activities before award of the cooperative agreement. Activities such as issuing requests for proposals could be started during preparation of the cooperative agreement. Negotiations with qualified firms could be conducted and a firm selected so that a contract could be signed immediately following cooperative agreement award. This would significantly reduce the time required to start projects and would also indicate that States have the capacity in-place to carry out the actions covered by the cooperative agreement, as required by Section 104(d)(1) of CERCLA. This approach will apply either to combined procurement for remedial planning, described above, or when the RI/FS and engineering design/construction oversight services are covered under separate procurement actions.

State personnel costs prior to award are not allowable, and it is our policy neither to reimburse nor credit these costs to the State's cost share under a deviation. However, these costs are not large when compared to costs incurred by a State after award. The State should be advised that these pre-award activities must be consistent with 40 CFR Part 33 or EPA will not approve the eligibility of the procurements involved.

## Procurement for Multiple Site Planning

Another option for States with an active remedial program is the issuance of a level of effort type contract similar to EPA's two REM/FIT contracts. After the contract is awarded, site planning activities could be started following award of an individual cooperative agreement without the need for site-specific procurement actions. This approach should be seriously considered by States that have numerous sites and available funding for State cost-sharing. However, procurement prior to award of a cooperative agreement must be consistent with 40 CFR Part 33. EPA's experience in this area could be used to assist States in developing this type of contract.

## Procurement Using Prequalification

In some situations States may choose to request qualifications from firms capable of performing remedial planning activities at one or more sites. Once a firm is prequalified, its name will be placed on a list which would then be used to solicit one or more site-specific proposals. This approach can be used in conjunction with one or more of the methods described above to reduce the time needed to issue and review requests for proposals. Prequalification procedures must conform with 40 CFR Part 33.230(c) to ensure adequate competition.

## Conflict of Interest

EPA's regulations covering State procurement (40 CFR Part 33) require that all contracting be conducted to provide maximum free and open competition. The regulations prohibit practices that unduly restrict competition, such as noncompetitive practices between firms and organizational conflicts of interest. Procurement of all engineering planning activities under a single contract will not result in an organizational conflict of interest. However, there is always the possibility of an organizational conflict of interest where an engineer performs the RI/FS activities under one contract and then competes for the follow-on engineering design and construction oversight contract. Since the remedial response program has sufficient safeguards in it through separate reviews at the State, Regional, and Headquarters level, we believe such conflicts of interest can be avoided. Nevertheless, firms conducting RI/FS, engineering design, and construction oversight activities will not be allowed to compete for the construction work since this would almost always constitute a conflict of interest.

To implement this guidance, Regional staff should inform State personnel of EPA's preferred procedures and encourage their use when possible. Your regional contacts in the Hazardous Site Control Division are available to assist in implementing this guidance. Specific questions concerning this guidance should be directed to Brint Bixler (FTS 382-2343) or Jan Wine (FTS 382-2455).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 18 1983

OFFICE OF
ADMINISTRATION

MEMORANDUM

TO: Regional Administrators
Regions I - X

Chief, Grants Operations Branch (PM-216)

FROM: Harvey G. Pippen, Jr., Director
Grants Administration Division (PM-216)

SUBJECT: Class Deviation from 40 CFR 33.510 and 33.515 for Certain Activities Conducted Under the Authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) provides financial assistance for planning and implementation of remedial actions to clean up uncontrolled hazardous waste sites posing significant threats to public health and the environment.

Many recipients of Superfund cooperative agreements want to retain the architectural and engineering (A/E) firm that provided remedial investigation or feasibility study services for engineering planning and design activities or engineering services during the construction phase of remedial actions. In cases where the initial subagreement did not include the subsequent A/E services for the construction phase, or where State policies do not permit procurement for activities where funding is not guaranteed, EPA's procurement regulations (40 CFR Part 33) require that the recipient readvertise and re-evaluate subagreement awards. These recipients could only use the same A/E by following the public notice and evaluation requirements in 40 CFR 33.510 and 33.515, or by obtaining an individual deviation from the Director, Grants Administration Division.

## Background

The Superfund remedial action process is made up of four separate but related activities. These activities are part of a comprehensive approach required by CERCLA and the National Oil and Hazardous Substance Contingency Plan (NCP, 40 CFR Part 300) to mitigate actual or potential threats to public health and the environment. These activities are: (1) remedial investigations (RI) to determine the type and extent of contamination, (2) feasibility studies (FS) to evaluate alternative actions and recommend a cost-effective remedy, (3) design of the remedy; and (4) construction of the remedy. Each of these activities requires the services of A/E firms qualified in hazardous waste management.

Continuity from one activity to another is needed to allow a timely and cost-effective response at Superfund sites. This class deviation saves time by eliminating the requirement for separate procurement actions between the various activities and provides continuity in A/E services. In addition, the time required to conduct subsequent activities would be reduced since the A/E firm would be familiar with the site conditions and will have had the opportunity to develop any specific expertise required to deal with the problems.

The Office of Emergency and Remedial Response issued guidance on February 22, 1983, discussing the need for continuity in providing A/E services in a particular project. That guidance recommends that States prepare site specific subagreements with firms to provide A/E services for all four of the activities listed above. EPA encourages this practice at new Superfund sites and expects this procedure to minimize future problems. This practice, however, is allowed by Part 33 only when the subagreement includes all four activities. Therefore, this class deviation is necessary to allow Superfund recipients to use the same A/E firm in all four of the Superfund activities when the original subagreement does not include all four activities. This class deviation applies in the following cases:

1. Where States conducted RI and/or FS activities without EPA assistance and are now requesting funding for the follow-on activities;

2. Where States conduct RI and/or FS activities with EPA assistance under a cooperative agreement, but did not include follow-on activities in the original RI and/or FS subagreement; and

3. Where EPA conducted RI, FS or design activities and the State, under a cooperative agreement, assumes responsibility for the subsequent phases of remedial responses using EPA's A/E contractors.

We estimate that 100 to 200 procurement actions over the next three years may fall into the above categories. The exact number will depend on whether recipients follow the guidance referenced above and the number of sites where the recipient rather than EPA conducts the remedial activities. We anticipate that this class deviation will save three to six months on the remedial response at many sites.

This class deviation does not unduly restrict open and free competition. States will be required to ensure adequate competition for the initial procurement of A/E firms. EPA has previously approved this approach in the wastewater treatment construction grants program under Title II of the Clean Water Act, where its use has not adversely affected competition.

ACTION

I am approving a deviation to permit recipients of Superfund remedial action cooperative agreements to use the A/E procured to conduct any or all of the remedial investigation (RI), the feasibility study (FS), or design to perform follow-on RI, FS, design or engineering activities without going through the public notice (§33.510) and evaluation procedures (§33.515) in 40 CFR Part 33. However, the recipient must comply with all other requirements in Part 33 when awarding the follow-on subagreements and must have followed all of the requirements in Part 33 (including the public notice and evaluation required in 40 CFR §33.510 and §33.515) for the initial procurement of the A/E, or EPA must have conducted the initial procurement.

The class deviation applies in the following cases:

1. Where the recipient conducted the RI and/or FS activities without EPA assistance but is using EPA funds for follow-on activities, the recipient may use the A/E for subsequent work provided the recipient attests that it:

   (a) Complied with the following requirements when it selected the A/E:

      (i) Section 33.230 "Competition," and

      (ii) Section 33.250(a)(1) and (a)(2) and (a)(3), and (b) "Documentation," and

      (iii) Sections 33.505 through 33.525 "Competitive negotiation," and

   (b) Complied with the following:

      (i) No employee, officer, or agent of the recipient, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(ii) None of the recipient's officers, employees, or agents solicited or accepted gratuities, favors, or anything of monetary value from contractors or other parties to subagreements.

(c) If the recipient uses the procedures in this paragraph to retain an architect or engineer, any EPA funded subagreement between the A/E and the recipient must meet all of the other provisions in Part 33.

2. Where the recipient conducted the RI, FS, or design activities with EPA assistance but the original subagreement did not include the follow-on activities and the recipient wishes to use the same A/E for follow-on Superfund remedial activities, the recipient does not have to follow the public notice and evaluation requirements in 33.510 and 33.515, for subsequent activities provided the recipient follows the rest of the procedures in 40 CFR Part 33.

3. Where EPA conducted the RI, FS, or design activities under a direct procurement contract but the recipient will assume the responsibility for subsequent phases of remedial response under a cooperative agreement, the recipient may use, with EPA's approval, EPA's A/E contractor without further public notice or evaluation provided the recipient follows the rest of the Part 33 requirements to award the subagreement.

4. Where the recipient awards a subagreement after the effective date of this class deviation, the initial request for proposals or bid solicitations must clearly state the possibility that the firm or individual selected could be awarded a subagreement for follow-on services.

CONCUR: Seymour D. Greenstone
for Howard M. Messner
Assistant Administrator
for Administration and
Resources Management (PM-208)

DATE: 11/17/83

CONCUR:
Lee M. Thomas
Assistant Administrator
for Solid Waste and
Emergency Response (WH-562A)

DATE: 11-8-83

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Requirements for Selecting an Off-Site Option in a Superfund Response Action

FROM: William N. Hedeman, Jr., Director (Signed) William N. Hedeman, Jr.
Office of Emergency and Remedial Response (WH-548)

TO: Regional Administrators
Attn: Superfund Coordinators
Regions I-X

## PURPOSE

This memorandum addresses the interface between the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, commonly known as Superfund) for off-site treatment, storage or disposal of hazardous substances. The purpose of this memorandum is two-fold. First, this memorandum establishes a general Agency policy applicable to both removal and remedial actions. That general policy is that all hazardous substances transported off-site for storage, treatment or disposal should be taken to a hazardous waste management facility that either has an applicable permit issued by EPA (or an authorized State) or has applicable interim status under section 3005(e) of RCRA (or the analogous State provision in an authorized State). Secondly, this memorandum establishes specific criteria for remedial actions for determining when hazardous substances may be transported off-site for treatment, storage, or disposal and for selecting an appropriate off-site hazardous waste management facility.

## LEGISLATIVE BACKGROUND FOR REMEDIAL ACTIONS

Section 104(c)(4) requires all remedial actions to be cost-effective. Further, section 104(c)(3)(B) prohibits Federal remedial action unless

> the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances . . .

The President's authority to make this determination has been delegated to the Administrator of EPA for those sites where EPA is the lead Federal agency. This authority has been redelegated to the Assistant Administrator of the Office of Solid Waste and Emergency Response. *

## POLICY

It is EPA's policy that:

1. For both removal and remedial actions: All hazardous substances[1] transported off-site for storage, treatment or disposal should be taken to a hazardous waste management facility that either has an applicable[2] RCRA permit issued by EPA (or an authorized state) or has applicable interim status under section 3005(e) of RCRA (or the analogous state provision in an authorized State).

2. For remedial actions: Storage, treatment and disposal of hazardous substances at off-site hazardous waste management facilities must be cost-effective in comparison to other response actions that would also provide adequate protection of public health, welfare and the environment.

3. For remedial actions: A RCRA compliance inspection must be performed at any hazardous waste management facility before it can receive hazardous substances from a CERCLA funded response. The inspection must demonstrate that there are no significant violations that affect the satisfactory operation of the facility.

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[1] It is important to realize that all substances designated as "hazardous" under CERCLA are not necessarily hazardous "wastes" as defined in RCRA. Hazardous wastes are a subset of hazardous substances. While all hazardous substances that are transported off-site should go to a hazardous waste management facility, hazardous substances which are not hazardous wastes are not legally subject to RCRA regulations.

[2] Both permits and interim status apply to specific wastes and specific storage, treatment or disposal processes. It must be determined that the facility has a permit or interim status that includes the wastes that would be transported to the facility and includes the type of process for which the wastes are being taken to the facility. Because of these concerns, it is important that selection of a facility be coordinated with RCRA Regional personnel.

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* Authority has also been redelegated to EPA Regional Administrators for certain IRMs.

## IMPLEMENTATION FOR REMEDIAL ACTIONS

### 1. Cost Effective Determination

The determination whether off-site treatment, storage or disposal is more cost-effective than on-site options must be made either in the Remedial Action Master Plan (RAMP) or during the feasibility study phase of remedial planning. The National Contingency Plan discusses three potential types of actions that may involve off-site facilities: initial remedial measures, source controls and off-site measures. When initial remedial measures are being considered, the RAMP should include the evaluations of alternatives necessary to determine that off-site treatment, storage, or disposal is more cost-effective than on-site alternatives. When source control or off-site measures are being considered, this evaluation will be done in the feasibility study. The analysis must consider the factors described in sections 300.68(h) and (i) of the National Contingency Plan, which include cost, technical, and environmental factors.

### 2. Choice of Hazardous Waste Management Facility

Any hazardous waste management facility that has an applicable permit or has applicable interim status may be considered for off-site storage, treatment or disposal. However, if a RCRA compliance inspection has not been completed within the last 12 months, a new inspection must be completed prior to award of a contract for storage, treatment or disposal. Violations that can adversely affect the facility's performance must be corrected before a contract or sub-contract can be awarded.

RCRA compliance inspections must be coordinated between Superfund and RCRA Regional personnel. Current strategy for the Office of Waste Programs Enforcement assures that all major treatment, storage, and disposal facilities and a substantial portion of the remaining facilities will be inspected during FY '83. When a compliance inspection is not scheduled for a hazardous waste management facility considered for off-site disposal, REM/FIT personnel should conduct the inspection under the direction of RCRA Regional personnel. The inspections checklist included in the RCRA inspection manual (July 24, 1981) should be used during the compliance inspection. In States with Phase I or II interim authorization or final authorization, the inspection should be conducted using State regulations and permit conditions. Confer with RCRA Regional personnel regarding State/EPA agreements as to who is authorized to conduct such inspections.

If, in the judgment of the Regional reviewers, the deficiencies at a facility may result in unsound treatment, storage or disposal practices, or pose a threat of future releases, the facility should not be selected for receiving hazardous substances from CERCLA projects. On the other hand, if deficiences are minor and will not affect its performance, the facility may be acceptable.[3]

Contract documents for remedial actions involving off-site treatment, storage, or disposal should describe this requirement and provide a mechanism for consideration and approval of facilities. Various mechanisms may be appropriate and should be selected after consultation with State personnel. A pre-qualified list of acceptable facilities is the preferred method and can be prepared on a State-wide or on a project specific basis. Off-site facilities should be given the opportunity to demonstrate compliance with this policy prior to award of the cleanup contract. An alternative method is to require each bidder to provide the documentation as part of their bid submission. This would be evaluated with the entire bid to determine if proposed off-site facilities are in compliance with this policy. If required, RCRA compliance inspections should be scheduled to avoid delaying contract award. Inspections for potential off-site facilities on Superfund projects should be given high priority to expedite this process.

This requirement for inspection is not applicable to removal actions due to time constraints. However, even for removal actions, Agency policy encourages transport of hazardous substances to hazardous waste management facilities that have been inspected and found to be acceptable.

3. Transportation Requirements

If an off-site alternative is chosen, the Lead agency's representative or designee is responsible for preparing a manifest in compliance with 40 CFR Part 262 or applicable State requirements for transportation of hazardous wastes. Furthermore, the lead agency's representative or designee should ensure that the transporter properly notifies under RCRA §3010.

For additional information on this matter, please contact Bruce Clemens at 382-2188.

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[3] The three memos dated July 7, 1981; January 22, 1981; and October 6, 1982; dealing with Guidance on Developing Compliance Orders under §3008 of RCRA, define the three classes of compliance violations. In general, class I violations should be considered significant. However, there may be instances where even class III violations are significant. Special attention should be given to selecting an interim status facility for land disposal. Always check the ground water monitoring reports for evidence of leaking. A facility that is doing only detection monitoring and not finding any contamination is presumed not to be leaking; a facility engaged in "assessment" monitoring is presumed to be leaking. The seriousness of the rate and extent of migration from the facility should be evaluated before deciding to transport wastes to a facility doing assessment monitoring.

# SUPERFUND COMMUNITY RELATIONS POLICY

## MAY 9, 1983

Community relations must be an integral part of every Superfund-financed remedial or removal action. This section provides overall policy on the conduct of community relations in Superfund. Community Relations in Superfund: A Handbook supplements this section with background material and more detailed procedural guidance on planning and implementing effective community relations programs.

### A. Program Objectives

The objectives of the Superfund community relations program are as follows:

- To gather information about the community in which a site or incident is located;
- To inform the public of planned or ongoing actions;
- To give the public the opportunity to be involved in decision making;
- To focus and resolve controversy.

### B. Program Design

In meeting the objectives of the Superfund community relations program, five general principles must be stressed.

(1) The community relations effort at a particular site must be tailored to the distinctive and individual characteristics of the site and the surrounding community.

(2) The design of a community relations program for a site should take into account both the technical complexity of the problem and the level of citizen concern. A more intensive program is required for situations that either are technically complicated or have generated a high level of local citizen concern.

(3) Up-front community relations planning is essential to an effective Superfund response. The key to proper planning is a knowledge of community concerns at the site and the scheduled technical action.

(4) In most cases, small-scale, informal communication techniques should be used, rather than large-scale, formal techniques (such as public hearings).

(5) Adequate opportunity must be given for the public to comment on proposed remedial cleanup actions prior to final EPA decisions.

## C. Program Implementation

Community Relations Plans. EPA regional offices are responsible for developing community relations plans for Superfund-financed actions. These plans must be submitted to EPA Headquarters for review. They are submitted together with the 14-point contractual document, for planned removals, or as part of the cooperative agreement or state Superfund contract, for remedial actions, as explained below; plans for immediate removals are submitted independently. Headquarters may recommend modifications to a plan on the basis of its review. Approval of the 14-point document, cooperative agreement, or state contract constitutes approval of the community relations plan. Funding for an action might be withheld if a plan is unacceptable.

The requirement to submit community relations plans to headquarters for review may be suspended if an EPA region has demonstrated that it is able to plan and implement effective community relations programs. The region will then be entrusted with full responsibility for community relations. At the request of the region, however, headquarters staff may still assist the region by reviewing CRPs and other planning documents, offering recommendations, and otherwise supporting the implementation of community relations programs.

A community relations plan is a management and planning tool which outlines the specific communications activities to be used during a Superfund response and the integration of these activities with the technical work at a site. The plan must include an assessment of community interests and concerns. This assessment must be based on on-site discussions with local officials, civic leaders, and community residents in order to gauge their concerns and to determine the level of community relations effort that will be necessary during the action. Each plan must contain the following elements:

- Background and history of community involvement at the site:
    - Site history
    - Local activity and interest
    - Key issues
- Specific objectives of the community relations program
- Community relations techniques to be used to meet specific objectives, including progress reports on past site work and reports on upcoming activities

- Workplan and schedule
- Budget and staffing plan
- List of affected and interested groups and individuals and a list of EPA, other federal, and state technical and community relations officials

Removal Actions. Immediate removals under the National Contingency Plan are taken to "prevent or mitigate immediate and significant risk or harm to human life or health or to the environment" (40 CFR 300.65(a)). The on-scene coordinator's principal responsibility is to protect public health and the environment until the immediate removal is completed. During such an incident, the primary community relations responsibility is to inform the community about response actions and their effects on the community.

For those immediate removals requiring headquarters' funding approval, a brief community relations plan must be prepared and submitted to headquarters for review. The "short form" community relations plan can be used as a model.

Planned removal actions usually allow more time than immediate removals for planning and consultation with the local community. The draft action memorandum requesting approval for a planned removal will include an assessment of community interest and concerns. A community relations plan, covering the entire action, must be prepared and submitted to headquarters for review along with the "14 point" contractual document.

At the conclusion of the planned removal, a responsiveness summary must be prepared. This summary should include a list of community relations activities conducted, an account of the issues that arose, and an explanation of how citizen concerns were dealt with during the response.

Remedial Actions. A community relations program is a key requirement of federal and state activities during a remedial action. Community relations plans must be developed for all Superfund-financed remedial actions.

The following steps must be taken to meet this requirement:

1. The Remedial Action Master Plan (RAMP) must include an assessment section which provides background information on community involvement at the site. The on-site community relations discussions must provide the basis for this section of the RAMP. The section should include:
    - Background and history of community involvement at the site (site history, local activity and interest, and key issues).
    - Specific objectives of the community relations program.

- Any immediate community relations activities recommended prior to submission of the community relations plan.
- List of affected and interested groups and individuals.
- Schedule for completion of community relations plan.

2. A community relations plan must be prepared and submitted to headquarters as part of the cooperative agreement application or the state Superfund contract. This plan includes:
   - The community relations assessment from the RAMP.
   - A list of community relations activities to be conducted at the site.
   - Budget estimate.
   - Tentative implementation schedule and workplan.
3. The community relations plan must be completed by including a detailed workplan and budget, a staffing plan, and a schedule. Funding for a remedial action might be withheld if this complete community relations plan is not acceptable.
4. When the feasibility study is completed, the community relations plan must be revised to include communications activities during the design and construction phases.

The public must be given a three week minimum comment period to review the feasibility study prior to selection of a remedial alternative. In some cases, components of projects may proceed prior to completion of the full feasibility study. In such cases, opportunity for public review still must be provided. In the case of simple remedial measures, such as fencing, storing drums, site security, etc., the public should be informed through the public meeting on the RAMP. For components of remedial actions (such as moving drums off-site), for which expedited feasibility studies are completed prior to the final feasibility study, the public comment period may be shortened, but the public still must be given at least two weeks to review this draft feasibility study. The Regions may extend any comment period if there is a reasonable request for an extension (e.g., if citizens had insufficient time to review the feasibility study because of delays in receiving copies), as long as the extension does not exacerbate threats to public health, welfare, or the environment at the site.

At the conclusion of any public comment period, a responsiveness summary will be prepared. This document will include a summary of the public comments, the Agency's response to those comments, and a list of community relations activities conducted.

Chapter 3 of the Handbook provides further guidance on community relations during remedial actions; Chapter 2 discusses removal actions.

## D. Administering the Community Relations Program

EPA headquarters is responsible for policy development, review of community relations plans, and overall program monitoring and evaluation. Headquarters also provides informational materials on Superfund and overall contract management.

For federal-lead responses, EPA regional offices are responsible for the development, implementation, and revision of community relations plans in conformance with this policy, supervision of contractors providing regional community relations support, and coordination with states.

For state-lead responses, the state is responsible for the development, implementation, and revision of community relations plans in conformance with this policy and the supervision of contractors providing state community relations support, and coordination with the EPA regions.

For all remedial responses, EPA regions are generally responsible for preparing the RAMP community relations assessment.

Contractors can be used to perform the preparatory work needed for community relations activities. Contractors, however, must never represent (or appear to represent) EPA before the public.

Refer to:

Community Relations in Superfund: A Handbook, U.S. Environmental Protection Agency, 1983.

# APPENDIX Q

## GLOSSARY OF TERMS

This appendix provides definitions of selected terms used throughout the text. It is not intended to be comprehensive in nature; rather, it attempts to highlight some of the terms commonly used in the Superfund remedial program. Statutory definitions have been quoted for those terms defined in CERCLA, while other definitions have been taken from appropriate EPA regulations, guidance, and publications.

Action Memorandum (AM): The internal EPA document whicn the Region may use to secure the Regional Administrator's conceptual approval for a proposed remedial planning project. For some initial remedial measures, the Action Memorandum may also be used to document the official selection of remedy by the Regional Administrator. Regions are encouraged, but not required, to use Action Memoranda.

Activity: A set of tasks and subactivities that together comprise a segment of the sequence of events undertaken in determining, planning, and conducting a response to a release or potential release of a hazardous substance. For accounting purposes, three activities have been defined:

- Remedial Planning, which consists of the subactivities of:
    - Remedial investigation/feasibility study
    - Remedial design
- Remedial Implementation, which consists of the subactivities of:
    - Remedial action
    - Operation and maintenance
    - Initial remedial measures
- Support and Management.

Allowable Costs: Costs that are eligible, reasonable, necessary, and allocable; are permitted under the appropriate Federal cost principles; are in accordance with EPA policy; and are within the scope of the project authorized by a Cooperative Agreement. For example, allowable costs might include costs that States incur for:

- Contractual services
- Response by State employees

- Materials and supplies
- Equipment
- Other direct costs.

Except for the CERCLA credit period, allowable costs may also include indirect costs incurred in carrying out a remedial response. Applicable cost principles established by the Federal government vary, depending upon the nature of the organization in question (see 40 CFR 30.410 of EPA's General Regulation for Assistance Programs).

Amendment: A revision to or an expansion of terms included under a Cooperative Agreement, Memorandum of Understanding, or Superfund State Contract; other EPA-lead remedial agreements do not require formal amendments. An amendment is necessary when the scope or dollar amount of an agreement is significantly changed. The original agreement should define situations in which amendments must be negotiated.

Award Official: The official who is authorized to execute an assistance agreement (grant or Cooperative Agreement) on behalf of the Federal government. This is the Regional Administrator for Regional Cooperative Agreements; the Chief, Grants Operations Branch is the Award Official for Headquarters Cooperative Agreements which have not been delegated to the Regions.

Comment Period: The period of time provided to local officials and citizens to review a proposed CERCLA remedial action. The Community Relations Plan (CRP) must specify the manner in which the community will have an opportunity to comment on a feasibility study prior to the selection of a site remedy. A minimum three-week comment period must be implemented for remedial actions. For simple initial remedial measures (IRMs), the CRP must specify that a public comment period will be held prior to initiation of the IRM unless public comment has been sought through a public meeting and/or comment period on an initial planning document, such as a RAMP. For complex IRMs, the CRP must also (1) address how the community will receive prior notification of any site action, and (2) state that a minimum two-week comment period will be provided for any complex IRM recommended by a limited feasibility study.

Commitment: An amount formally reserved to cover an expected obligation. A commitment reflects the intention to obligate funds to a specific activity.

Commitment Notice (EPA Form 2550-9): A form used by EPA to commit funds to cover an expected obligation for State-lead remedial response agreements. The Commitment Notice is one part of the Cooperative Agreement concurrence package.

Community Relations Plan (CRP): A plan for addressing local citizens' and officials' concerns about a hazardous waste site and for integrating community relations activities into the technical response at a site. The CRP should help prevent disruptions and delays in response actions and partially fulfill the NEPA requirement for public notification and participation. Each CRP should include a description of the background and history of the site and community concerns about the site; objectives of the site-specific community relations program; specific techniques to be used to achieve those objectives; and a work plan, schedule, budget, and designation of staff who will be responsible for the program.

Contract: (a) The term used to describe a variety of agreements or orders to acquire supplies or services for the direct benefit of EPA; or (b) a written agreement (such as an SSC), enforceable by law, between two or more competent parties to perform or refrain from performing an act authorized by law for legal consideration.

Cooperative Agreement (C/A): An assistance agreement whereby EPA transfers money, property, services, or anything of value to a State for the accomplishment of certain remedial activities, subactivities, or tasks, as authorized by CERCLA. It assumes a significant Federal involvement in the State's performance of these activities. The remedial Cooperative Agreement provides general information about the project, such as the approved budget, and any specific conditions applicable to the project. It also documents any required CERCLA section 104(c)(3) assurances.

Cost Recovery: The process by which Federal costs of response actions and damage to natural resources are recovered from responsible parties.

Decision Memorandum: The document used to transmit a Superfund remedial response agreement to the Regional Administrator for review and approval. It contains a technical summary of the project, results of the Office of Regional Counsel review, and a statement that the proposed project is consistent with the objectives and mandates of CERCLA. The memorandum also recommends that the project be funded, highlights the Community Relations Plan, and assesses the enforcement status of the site.

Deviation Request: An official written request to allow a deviation from EPA's General Regulation for Assistance Programs (40 CFR 30). One example of a situation requiring a deviation request would be the need to incur costs at a site prior to the execution of a Cooperative Agreement.

Disbursement (Net): Checks issued or other payments made, net of refunds and reimbursements. Also referred to as "net outlays."

Disposal (statutory definition, RCRA): The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

Expenditure/Expense: The incurrence of a liability or a payment of cash, often used synonymously with "disbursement" or "outlay."

Facility (statutory definition): (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located; [this] does not include any consumer product in consumer use or any vessel.

Feasibility Study (FS): The portion of a subactivity in remedial planning involving a study to (a) evaluate alternative remedial actions from a technical, environmental, and cost-effectiveness perspective; (b) recommend the most cost-effective remedial action; and (c) prepare a conceptual design, cost estimates for budgetary purposes, and a preliminary implementation schedule for that action. (The entire subactivity is known as a "remedial investigation/feasibility study.")

Grant Funding Order (EPA Form 5700-14): An official EPA document used to signify program office approval of funding for a Cooperative Agreement. It breaks down the project's approved budget by remedial activity and subactivity and by object class category. The program conditions to the Cooperative Agreement are attached to this document.

Hazard Ranking Score: A numeric estimate of the relative severity of a hazardous substance release or potential release based on: (a) the relative potential of substances to cause hazardous situations; (b) the likelihood and rate at which the substances may affect human and environmental receptors; and (c) the severity and magnitude of potential effects. The score is computed using the Hazard Ranking System (HRS).

Hazard Ranking System (HRS): A model developed and designed to provide an estimate of the relative severity of a hazardous substance release. The HRS computes a score, from 1 to 100, for each candidate site which serves as an input to the decision of whether the site should be included on the National Priorities List and, if so, at what ranking compared to other sites on the List.

Hazardous Substance (statutory definition): Also sometimes referred to as hazardous waste, it is defined as (A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of [CERCLA], (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act, and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator [of EPA] has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Initial Remedial Measure (IRM): A remedial implementation subactivity that may be undertaken during a remedial response to limit exposure or threat of exposure to a significant health or environmental hazard or to stabilize an existing situation at a site in order to permit the implementation of additional actions. Examples of factors used in determining whether an IRM is appropriate and the associated action(s) which may be taken include:

- Actual or potential direct contact with hazardous substances (measures might include fences, site security)
- Substantial threat of fire or explosion or of a serious public health hazard (measures might include drum removal)

- Highly contaminated soils largely at or near the surface (measures might include temporary capping or removal of highly contaminated soils from drainage areas).

An IRM must be consistent with longterm site response actions.

Interagency Agreement (IAG): A written agreement, enforceable by law, between EPA and another agency (Federal, State, or local) where goods and/or services are provided, whether or not in exchange for monetary reimbursement, or where policy agreements are delineated. IAGs for CERCLA activities may function both as obligating documents and as reporting documents necessary for EPA financial and program management.

Lead Management Responsibility: Direct responsibility for managing remedial activities, subactivities, and tasks at a site. In the remedial program, where EPA has lead management responsibility remedial activities at the site are usually carried out by an EPA contractor, the U.S. Army Corps of Engineers (or its contractor), or another Federal agency. Where a State has lead management responsibility remedial activities are carried out by State personnel or by a State contractor. In this guidance document the identification of lead management responsibility determines the type of agreement negotiated between EPA and a State. When EPA assumes lead management responsibility, a Superfund State Contract, Memorandum of Understanding, or State letter of request may be used, as appropriate; when the State assumes lead management responsibility, a Cooperative Agreement is used.

Letter of Credit (LOC): The method most frequently used by EPA to provide a State with funds awarded under a Superfund remedial Cooperative Agreement. Funds are transferred to the commercial bank designated by the State and the State draws down funds as required.

Memorandum of Understanding (MOU): An agreement between EPA and another agency (Federal, State, or local) that sets forth basic policies and procedures governing their relationship on matters of mutual interest and responsibility. There is no exchange of funds under this type of agreement. In the context of this document, an MOU usually refers to one type of agreement which may be negotiated between EPA and a State to undertake EPA-lead remedial planning subactivities.

National Contingency Plan (NCP): Officially known as the National Oil and Hazardous Substances Contingency Plan (40 CFR 300), this regulation outlines responsibilities and authorities for responding to releases into the environment of hazardous substances and other pollutants and contaminants under the statutory authority of CERCLA and section 311 of the Clean Water Act (CWA).

National Priorities List (NPL): A list of the highest priority releases or potential releases of hazardous substances, based upon State and EPA Regional submissions of candidate sites and the criteria and methodology contained in the Hazard Ranking System (HRS), for the purpose of allocating funds for remedial response. Published by EPA, the NPL is updated periodically.

Obligation: The amount of orders placed, contracts awarded, services received, and similar transactions during a given period which will require payments during the same or a future period. These will include outlays for which obligations have not been previously recorded and will reflect adjustments for differences between previously recorded obligations and actual outlays to liquidate those obligations (OMB Circular A-34).

Off-Site Disposal: Transport of hazardous substances from a waste site to an approved facility for storage, treatment, destruction, or secure disposition. Consistent with section 101(24) of CERCLA, off-site disposal will be undertaken only if that action "(A) [is] more cost-effective than other remedial actions, [or] (B) will create new capacity to manage, in compliance with subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility, or (C) [is] necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials."

Off-Site Remedial Measure: A class of remedial action taken as part of remedial response when there is a significant threat to public health, welfare, or the environment from hazardous substances that have migrated beyond the site or area where they were originally located. An off-site remedial measure may include provision of permanent alternative water supplies, management of a drinking water aquifer plume, or treatment of drinking water aquifers.

On-Site Community Discussions: Discussions which must be conducted before developing a Community Relations Plan. These discussions involve a series of short, informal discussions with State and local officials involved with the site, citizen leaders representing interest groups, and other concerned citizens. The information obtained from these discussions can provide valuable data about local attitudes concerning the site and past government actions and provide an opportunity for public input to the response planning process. These discussions also enable community relations staff to identify the best means to provide information to the community during the response action.

Operable Unit: A component of a cost-effective remedial response that by itself eliminates or mitigates a release or threat of release and needs no additional action to perform its function. Examples include: (a) off-site transport and disposal of drums; (b) draining surface impoundments; (c) construction of drainage controls; (d) installation of slurry walls (and/or clay caps); (e) provision of alternative water supplies; and (f) construction and operation of ground water treatment systems. Typically, an operable unit would not include: (a) fencing or other site security; (b) repacking of drums on-site without further actions to treat or dispose of the waste; or (c) installation of a cap and barrier wall that require ground water treatment to be effective.

Program Control System (PCS): An EPA management system aimed at minimizing the delay in initiating remedial response projects and obligating the funds required. PCS is designed to ensure that incomplete prerequisite actions are identified, the status of open action items is monitored, progress is reported to concerned management, and available resources and time are focused on the highest priority projects, taking into account the program's overall objectives.

Project: A group of remedial response subactivities at a site, intended to study and/or remedy a verified or potential release of a hazardous substance which poses an actual or potential significant threat to human health, the environment, or real or personal property. Remedial projects usually involve groupings of one or more of the following subactivities: remedial investigation/ feasibility study, remedial design, remedial action, initial remedial measures, and/or operation and maintenance. A project can also be a subsite.

Project Tracking System (PTS): The automated system developed by EPA to track and provide information for oversight of remedial responses at sites on the National Priorities List.

Regional Site Project Officer (RSPO): The designated EPA Regional official who coordinates, manages, and monitors site activities covered in both EPA and State-lead remedial response agreements.

Regional Superfund Community Relations Coordinator (RSCRC): The RSCRC is the Regional office staff person responsible for designing and implementing a site-specific community relations program. The RSCRC works closely with the site's Regional Site Project Officer to establish a site specific community relations program.

Release (statutory definition): Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing [of a substance] into the environment.

Remedial Accomplishments Plan (RAP): The document which each Region prepares to designate those activities that it intends to initiate during a given fiscal year. A RAP is developed by the RSPOs and submitted to the AA, SWER for approval. By approving the RAP, the AA allocates funds for proposed remedial planning subactivities. The RAP is also used as the basis for transferring funds to the Regions for obligation at State-lead sites; obligation of funds should take place only for those projects included on the RAP.

Remedial Action (RA): A subactivity in remedial response involving actual implementation, following design, of the selected source control and/or off-site remedial measure.

Remedial Action Master Plan (RAMP): A planning document that was prepared for sites to identify projects necessary for restoration of a hazardous waste site. A RAMP included a survey and assessment of existing site data, an outline of remedial objectives, an assessment of whether initial remedial measures were needed, the schedule of planning and implementation activities, a statement of work for the first recommended phase of remedial activity at the site, and an estimate of project costs. The Office of Emergency and Remedial Response no longer initiates RAMPS.

Remedial Design (RD): A subactivity in remedial response where the selected remedy is clearly defined and/or specified in accordance with engineering criteria (i.e., a site action plan, a relocation plan, or engineering drawings and specifications) in a bid package, enabling immediate implementation of the remedy.

Remedial Implementation: An activity in remedial response which begins after remedial planning has been completed. Implementation covers the range of remedial response from initiation of the remedy through EPA participation in operation and maintenance, specifically encompassing the subactivities of remedial action, initial remedial measure, and operation and maintenance. States are obliged to share in the costs of all remedial implementation subactivities.

Remedial Investigation (RI): The portion of a subactivity in remedial planning involving an investigation to gather the data necessary to: (a) determine the nature and extent of problems at the site; (b) establish remedial response criteria for the site; (c) identify preliminary alternative remedial actions; and (d) support the technical and cost analyses of the alternatives. (The entire subactivity is known as "remedial investigation/ feasibility study.")

Remedial Planning: An activity in remedial response initiated at a site prior to implementing the remedial action. Remedial planning encompasses the subactivities of remedial investigation/feasibility study and remedial design. States are not required to share in costs of remedial planning at privately-owned sites; at publicly-owned sites they must share in remedial planning costs only if and when a remedial action is undertaken.

Remedial Response: A series of activities and subactivities intended to provide permanent resolution of a release or potential release of a hazardous substance from a site. Remedial response generally includes the following sequence of subactivities: remedial investigation/feasibility study, remedial design, remedial action, and operation and maintenance.

Remedy (statutory definition): [An action] consistent with permanent remedy taken ... in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions ... as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, onsite treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment.

Remove or Removal (statutory definition): [The] cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) [of CERCLA], and any emergency assistance which may be provided under the Disaster Relief Act of 1974.

Responsible Party (statutory definition): [Includes] (1) the owner or operator of a vessel (otherwise subject to the jurisdiction of the United States) or a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances, and (4) any person who accepts or accepted any hazardous substance for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, [the responsible party] shall be liable for -- (A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the National Contingency Plan; (B) any other necessary costs of response incurred by any other person consistent with the National Contingency Plan; and (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

Responsiveness Summary (RS): A report prepared by the community relations staff at two points during remedial response: (1) at the conclusion of the feasibility study and submitted to Headquarters with the draft Record of Decision, and (2) at the conclusion of the remedial action, to be submitted one month after completion of the remedial action. This report reviews public inquiries, the issues and concerns raised, and how EPA or the State has responded to these issues and concerns. The report may be used to help document for the public record how EPA or the State has responded to key community concerns and issues.

Scope of Work: The element of a Federal-lead remedial planning agreement which generally outlines the subactivities, tasks, and subtasks to be undertaken at the site. The scope of work also provides general information on the objectives of the project.

Scoping: An assessment, using criteria contained in the National Contingency Plan, of the type of problem presented by a release and an initial determination of the type or types of remedial activities and subactivities that may be appropriate to evaluate and remedy the problem. Scoping is undertaken during the preliminary planning phase of remedial response.

Site (also refers to a hazardous substance site or a hazardous waste site): An area or a location at which hazardous substances have been stored, treated, disposed, placed, or otherwise came to be located. This includes all contiguous land, structures, other appurtenances, and improvements on the land used for treatment, storage, or disposal of hazardous substances. A site may consist of several treatment, storage, or disposal facilities (e.g., impoundments, containers, buildings, or equipment).

Source Control Remedial Measure: A type of remedial action, undertaken at a site if a substantial concentration of hazardous substances remains at or near the area where they were originally located and inadequate barriers exist to retard migration of substances into the environment. Source control remedial measures may include alternatives to contain the hazardous substances where they are located (e.g., grout curtains, clay caps, leachate collection and treatment systems) or may eliminate potential contamination by transporting the hazardous substances to a new location (e.g., off-site disposal).

State Assurances (statutory definition): The commitments a State must make to EPA prior to authorization of any Fund- financed remedial actions at a site. CERCLA section 104(c)(3) identifies these as "(A) the State will assure all future maintenance of the removal and remedial actions provided for the expected life of such actions as determined by the President; (B) the State will assure the availability of a hazardous waste disposal facility acceptable to the President and in compliance with the requirements of subtitle C of the Solid Waste Disposal Act for any necessary offsite storage, destruction, treatment or secure disposition of the hazardous substances; and (C) the State will pay or assure payment of (i) 10 per centum of the costs of the remedial action, including all future maintenance, or (ii) at least 50 per centum or such greater amount as the President may determine appropriate, taking into account the degree of responsibility of the State or political subdivision, of any sums expended in response to a release at a facility that was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof."

State Cost Share: The amount of matching funds a State must provide for remedial activities initiated under CERCLA, as determined by section 104(c)(3)(C) of CERCLA. States must provide 10 percent of the costs of remedial implementation if the site was privately-owned at the time of disposal and at least 50 percent of all response costs if the site was publicly-owned.

State Credit (statutory definition): CERCLA section 104(c)(3) states that EPA "... shall grant the State a credit against the share of the costs for which it is responsible... for any document- ed direct out-of-pocket non-Federal funds expended or obligated by the State or a political subdivision thereof after January 1, 1978 and before [December 11, 1980] for cost-eligible response actions and claims for damages compensable under section 111" of CERCLA.

State Letter of Request: The letter, sent from the administrator of the State pollution control agency to an EPA Regional Administrator, requesting EPA action at a waste site. A letter of request can initiate only EPA-lead remedial planning activities. The letter must refer to and generically approve the required remedial subactivities, agree to participate in implementing the Community Relations Plan, designate a State Project Officer for the project, and state that State officials will meet with EPA personnel to exchange site and project information.

State Project Officer (SPO): The designated State official responsible for direct management of the activities covered in a Cooperative Agreement or for ensuring that the State carries out responsibilities defined in an EPA-lead remedial response agreement.

Statement of Work (SOW): The element of a remedial response agreement that specifies in detail the subactivities, tasks, subtasks, and objectives to be performed pursuant to that agreement. The SOW should contain salient points regarding the background of the release or potential release, problem definition, purpose of the work, and a description of the services to be performed either by the State or by an EPA contractor.

Subactivities: Those individual events in remedial response which comprise remedial activities. The subactivities under remedial planning include remedial investigation/feasibility study and remedial design; remedial implementation subactivities are remedial action, operation and maintenance, and initial remedial measures.

Superfund State Contract (SSC): A bilateral contract between EPA and a State that is legally binding on both parties. The SSC is not a procurement contract, but is used to document EPA and State responsibilities and to obtain any necessary State assurances for EPA-managed remedial responses. An SSC is appropriate for any EPA-lead remedial implementation subactivities which require State cost-sharing.

Task: A discrete piece of work that addresses a single objective specified by a statement of work for planning, evaluating, or implementing a response action: e.g., hydrogeological study, hazardous waste characterization, alternative analysis, construction of a fence, or installation of a leachate control system.

Work Assignment Package: The vehicle used to assign work to an EPA contractor. It includes the government estimate of direct labor hours, a statement of work, and the required period of performance.

Work Plan: The detailed listing of all activities, subactivities, tasks, and subtasks to be conducted under a remedial response agreement. It should also include a schedule for completion of the work and the outputs anticipated.

Zone Manager (ZM): An EPA Headquarters official designated to provide assistance and Headquarters input to State and Regional personnel involved in developing documents necessary for funding remedial response activities at waste sites. The Zone Manager also administratively facilitates review and any necessary approvals of these documents.

# APPENDIX R

## LIST OF REFERENCES

The following statutes, regulations, forms, and documents have been referenced throughout the text and appendices of this document. They should be available upon request from the U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Washington, D.C., or from the EPA Regional Superfund program offices.

### STATUTES

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (PL 96-510)

Federal Grant and Cooperative Agreement Act of 1977 (PL 95-224)

Freedom of Information Act (PL 93-502)

National Environmental Policy Act of 1969 (PL 91-190)

Prompt Payment Act (PL 97-177)

Relocation Assistance and Real Property Acquisition Policies Act (PL 91-646)

Resource Conservation and Recovery Act of 1976 (PL 94-580)

### REGULATIONS

*Cost Principles for State and Local Governments*, OMB Circular A-87.

EPA General Regulation for Assistance Programs (40 CFR Part 30).

EPA Order 1440.1, *Respiratory Protection*.

EPA Order 1440.2, *Health and Safety Requirements for Employees Engaged in Field Activities*.

EPA Order 2750.A, *Management Follow-up on Findings in Audit Reports*.

*Evaluation, Review, and Coordination of Federal and Federally-Assisted Programs and Projects*, OMB Circular A-95.

Executive Order 11988, "Floodplains Management".

Executive Order 12372, "Intergovernmental Review of Federal Programs" (47 FR 30954), July 16, 1982.

Executive Order 12432, "Development of Minority Business Enterprises," July 14, 1983.

Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (40 CFR Part 4).

Instructions on Budget Execution, OMB Circular A-34.

Intergovernmental Review of Environmental Protection Agency Programs and Activities, Final Rule (40 CFR Part 29).

National Oil and Hazardous Substances Contingency Plan (47 FR 31180), July 16, 1982.

National Priorities List, Final Rule and Proposed Update (40 CFR Part 300 and 48 FR 40658), September 8, 1983.

Procurement Under Assistance Agreements (40 CFR Part 33).

Public Information: Confidentiality of Business Information (40 CFR Part 2, Subpart B).

Uniform Administrative Requirements for Grants -- An Aid to State and Local Governments, OMB Circular A-102.

FORMS

Application for Federal Assistance: State and Local Nonconstruction Programs (EPA Form 5700-33)

Assistance Amendment (EPA Form 5700-20B)

Commitment Notice (EPA Form 2550-9)

Cooperative Agreement (EPA Form 5700-20A)

Financial Status Report (Standard Form 269)

Grant Funding Order (EPA Form 5700-14)

Letter of Credit Voucher (TFS-5401)

Minority and Women's Business Utilization Report (EPA Form 4720)

Procurement System Certification Form for Applicants for EPA Assistance (EPA Form 5700-48)

## DOCUMENTS

"Budgeting/Tracking of Funds in Cooperative Agreements," SRCB, December 17, 1982.

"CERCLA Credit Period Costs," OERR, December 23, 1982.

"CERCLA Pre-Award Costs," OGC, May 10, 1983.

"Class Deviation from 40 CFR 30.720(a)," GAD, May 12, 1983.

"Class Deviation from 40 CFR 33.510 and 33.515 for Certain Activities Conducted Under the Authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980," GAD, November 18, 1983.

Community Relations in Superfund: A Handbook (Interim Version), OERR, September 1983.

Cost Recovery Actions Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), OEC and OSWER, August 26, 1983.

EPA Implementation Guidelines for the Federal Grant and Cooperative Agreement Act of 1977.

EPA Interim Standard Operating Safety Guide, September 1982.

EPA Occupational Health and Safety Manual.

"Guidance for State Contracting of Remedial Planning Activities," OERR, February 22, 1983.

"Guidance on Cooperative Agreements and Contracts with States under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (PL 96-510)," OERR, March 1982.

"Guidance on Implementing Waiver of 10 Percent Cost-Share for Remedial Planning," OERR, June 1, 1983.

"Guidance on Initial Remedial Measures" (draft), OERR, June 1983.

"Guidelines and Specifications for Implementing Quality Assurance Requirements for State and Local Financial Assistance Involving Environmental Measurements" (QAMS-003/80/03).

"Guidelines and Specifications for Preparing Quality Assurance Project Plans" (QAMS-005/80).

"Intergovernmental Review of EPA Programs and Activities; Procedures to Establish Comment Period Start Dates for Programs and Activities Subject to Executive Order 12372" (48 FR 44643), September 29, 1983.

*Letter of Credit Users Manual*, EPA, Division of Financial Management.

*Management Plan and Operating Procedures: Remedial Planning/Field Investigation Team Zone Contracts*, HSCD, October 20, 1982.

*Model Statement of Work for Remedial Investigations and Feasibility Studies*, OERR, March 1, 1983.

"Notice of Supplemental Procedures for Establishing Start Dates of Comment Period for Activities Subject to Executive Order 12372," (48 FR 54692), EPA, December 6, 1983.

"Payment of State Enforcement Costs Under Superfund," OERR and OWPE, December 15, 1982.

"Policy on Cost-Sharing at Publicly-Owned Sites," OSWER, March 30, 1983.

*Program Control Status Book* (PCS Manual), HSCD.

*Project Tracking System (PTS): Procedures Manual/Users Guide*, OERR, August 1982.

*REM/FIT Zone Contract Management Procedures: An Illustrated Guide*, HSCD, April 1983.

*Record of Decision Guidance*, OERR, August 25, 1982.

"Requirements for Selecting an Off-Site Option in a Superfund Response Action," OERR, February 28, 1983.

"Suggested Regional File Structure, Superfund Priority Sites and Priority Site Candidates," OERR, May 1982.

"Superfund Community Relations Policy," OSWER, May 1983.

"Treatment of State Recoveries From Responsible Parties," OERR, December 15, 1982.

*Users Guide to the EPA Contract Laboratory Program*.

"Waiver of 10 Percent Cost Share for Remedial Planning Activities at Privately-Owned Sites," OSWER, May 13, 1983.